SUPREME COURT OF THE UNITED STATES.

No. 116.

THOMAS W. DORR, PLAINTIFF IN ERROR,

vs.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

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NEWPORT, *&c.*

At the supreme judicial court of the State of Rhode Island and Providence Plantations, holden at Newport, within and for the county of Newport, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and forty-two.

The grand jurors of the State of Rhode Island and Providence Plantations, and in and for the body of the county of Newport, upon their oaths present: That Thomas Wilson Dorr, of the city of Providence, in the county of Providence, attorney and counsellor at law, being an inhabitant of, and residing within the said State of Rhode Island and Providence Plantations, and being under the protection of the laws of said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising, and intending the peace of the said State of Rhode Island and Providence Plantations to disturb, and to stir up, move, and excite insurrection, rebellion, and war against the said State, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously, did conspire, compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, afterwards, to wit, on the said seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with a great multitude of persons, whose names are at present to the jurors aforesaid unknown, to a great number, to wit, to the number of three hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State of Rhode Island and Providence Plantations; and then and there, that is to say, on the day and year aforesaid, at the city of Providence aforesaid, in the aforesaid county of Providence within the said State, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said State

of Rhode Island and Providence Plantations, contrary to the duty of his said allegiance and fidelity, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the jurors aforesaid upon their oaths aforesaid do further present, that the said Thomas Wilson Dorr, being under the protection of the laws of the said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of the said State to disturb, and to stir up, move, and excite insurrection, rebellion, and war against the said State, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did conspire, compass, imagine, and intend to raise and levy public war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr afterwards, to wit, on the said eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with a great multitude of other persons whose names are at present to the jurors aforesaid unknown, to a great number, to wit, to the number of three hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, that is to say, on the day and year last aforesaid, at the city of Providence aforesaid, in the aforesaid county of Providence, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said other persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy public war against the said State, contrary to the duty of the allegiance of the said Thomas Wilson Dorr, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the jurors aforesaid upon their oaths aforesaid do further present, that the said Thomas Wilson Dorr, being an inhabitant of and residing within the said State of Rhode Island and Providence Plantations, and being under the protection of the laws of the said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of the said State to disturb, and to stir up, move, and excite insurrection, rebellion, and

war against the said State, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did conspire, compass, imagine, and intend to raise and levy public war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr afterwards, to wit, on the said twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester aforesaid, in the aforesaid county of Providence, with a great multitude of other persons, whose names are at present to the jurors aforesaid unknown, to a great number, to wit, to the number of four hundred other persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State, and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, that is to say, on the day and year last aforesaid, at Glocester aforesaid, in the aforesaid county of Providence, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said other persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said State, contrary to the duty of the allegiance of the said Thomas Wilson Dorr, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the jurors aforesaid upon their oaths aforesaid do further present, that the said Thomas Wilson Dorr, being under the protection of the laws of the said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of the said State to disturb, and to stir up, move, and excite insurrection, rebellion, and war against the said State, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester aforesaid, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did conspire, compass, imagine, and intend to raise and levy public war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, afterwards, to wit, on the said twenty-seventh day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester aforesaid, in the aforesaid county of Providence, with a great multitude of other persons, whose names are at present to the jurors aforesaid unknown, to a great num-

ber, to wit, to the number of four hundred other persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State; and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, that is to say, on the day and year last aforesaid, at Glocester aforesaid, in the aforesaid county of Providence, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said other persons, so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy public war against the said State, contrary to the duty of the allegiance of the said Thomas Wilson Dorr, against the form of the statute in such case made and provided, and against the peace and dignity of the State. Preferred by

ALBERT C. GREEN,
Attorney General.

A true bill:

William Almy, *Foreman.*

William C. Read,	Nicholas Tallman,
Richard Bailey,	John O. Dockray,
Stephen P. Barker,	Otis Lake,
Henry Castoff,	Alden Wilkey,
William Smith,	Andrew J. Almy,
Seth Bateman,	John T. Tilley.

State of Rhode Island and Providence Plantations.

NEWPORT, *Sc.*

Supreme Court, August term, A. D. 1843.

To the sheriffs of the county of Newport, Bristol, Providence, Kent, and Washington, and the deputies of either of them, greeting:

[SEAL.] Whereas, the grand jurors within and for the county aforesaid, at the August term of said court, A. D. 1842, and on the eleventh day thereof, returned an indictment, then and there preferred against Thomas Wilson Dorr, of the city of Providence, in the county of Providence, and the State of Rhode Island and Providence Plantations, attorney and counsellor at law, charging him, the said Thomas Wilson Dorr, with having, at divers times therein stated, committed treason against the said State of Rhode Island and Providence Plantations. A true bill. And the said Thomas Wilson Dorr now stands indicted therefor, and the said court having ordered and directed a capias to issue against the said the Thomas Wilson Dorr:

You are therefore hereby commanded, in the State of Rhode Island and Providence Plantations, forthwith to apprehend the body of the

said Thomas Wilson Dorr, and him have before the justices of said supreme court, to make answer to said indictment.

Hereof fail not, but make true return to our said court, with your doings thereon.

Witness, honorable Job Durfee, chief justice at Newport, this day, September 13th, anno domini 1843.

E. P. ALLEN, *Clerk.*

PROVIDENCE, *Sc.* *Oct.* 31, 1843.

Apprehended the within named Thomas W. Dorr, and committed him to the Providence county jail for safe keeping.

JABEZ J. POTTER,
D. Sheriff.

Apprehending,	40
Committing and travel,	78
Cash paid for hack,	1 00
	$2 18

NEWPORT, *Sc.* *February* 29, 1844.

I have this day taken the within named Thomas W. Dorr from the Providence county jail, and now have him before the supreme court as commanded.

JABEZ J. POTTER,
D. Sheriff.

Carriage from prison in Providence to boat,	$1 00
Travel from Providence to Newport,	2 40
Three passages from Providence to Newport,	2 25
Hack from boat to court,	1 00
Aid by D. R. Chaffee,	3 00
Three dinners at Newport,	1 50
My time, two days,	4 00
Two passages from Newport to Providence,	1 50
	$16 65

Supreme court, August term, A. D. 1843. Tenth day of the term, Feb. 29, 1844.

STATE
vs.
THOMAS WILSON DORR.

Thomas Wilson Dorr having been brought into court on a capias issued out of this court, and by virtue of an indictment pending before this court against the said Thomas Wilson Dorr for treason.

Said indictment having been read to him, and he having been asked what he had to say to said indictment, whether he were guilty or not guilty—when his counsel, Mr. Atwell, filed a plea to the jurisdiction of this court.

The court order the said Thomas Wilson Dorr into the custody of the sheriff of the county of Newport.

Twelfth day of the term.

STATE
vs.
THOMAS W. DORR.

The counsel for the prisoner moved this court that Thomas W. Dorr be brought into court.

The court order said Thomas W. Dorr to be brought into court.

Said Thomas W. Dorr being brought into court, thereupon the attorney general demurred to the special plea of the prisoner. Said Thomas W. Dorr joins in the demurrer.

The counsel for the prisoner moved the court for an order for the time when the argument should be made on the demurrer.

Argued to the court by the attorney general for the State, and by the prisoner and his counsel, Mr. Atwell, for the prisoner.

The court order that the argument on the demurrer be made on Thursday next.

It was moved that the prisoner, Thomas W. Dorr, be remanded to prison. The court order that the prisoner be remanded.

March term, A. D. 1844.—*Second day.*

The counsel for Thomas W. Dorr moved the court that Thomas W. Dorr be brought into court.

Thomas W. Dorr was brought into court.

And said Thomas W. Dorr withdraws his special plea in abatement pleaded, and pleads not guilty.

The court direct the prisoner to be remanded.

Afternoon.—Second day.

Mr. Turner moved the court that Thomas W. Dorr be brought into court.

The court order the sheriff to bring Thomas W. Dorr into court.

Thomas W. Dorr being brought into court, moved this court to proceed in his trial without delay.

The court having signified their determination to adjourn to the twenty-sixth day of April next, there not being time during the present week to try the indictment against Thomas W. Dorr. Whereupon said Thomas W. Dorr moved the court that said indictment be removed to the county of Providence.

The motion made by Thomas W. Dorr, argued to the court by Messrs. Turner and Atwell for the prisoner, and by the attorney general and Mr. Bosworth for the State.

The court decide, that the reasons assigned for the removal of the trial of the indictment against Thomas W. Dorr to another county, by his counsel, are insufficient.

The prisoner moved the court for a duces tecum to bring into court certain papers, for the purpose of making preparation for his trial.

The court decide that they cannot issue a writ of duces tecum unless the papers are designated, which may be wanted on the trial.

Fourth day of the term.

The court direct a venire to issue for sixty petit jurors to appear on the twenty-sixth of April, 1844. Clerk to furnish Thomas W. Dorr with a list of jurors on the Tuesday previous.

Friday morning, April 26, 1844.—*Fifth day of the term.*

The sheriff returned, on a venire, the following named individuals, as petit jurors to serve this court so long as there may be occasion for them, viz:

George Vaughan,
John Stephens,
James Shaw,
William L. Melville, jr.,
Eleazer Treavett,
Charles Whitfield,
William S. Nichols,
William Littlefield,
Nathaniel Sweet,
William Price,
Isaiah Crooker,
Matthew Cozzens,
Adam S. Coe,
Samuel Carr,
Peleg Clarke,
William Burlingham,
Charles Babcock,
Stephen Southwick,
Charles Drans,
Robert Seatle,
John D. Northam,
Charles Sherman,
Noah White,
George Freeborn,
Jonathan Record, jr.,
William T. Potter,
Samuel Barker,
Daniel Tisdale,
William Card,
George W. Tilley,
William S. Vose,
All of Newport.

William Peckham,
Abraham C. Coggeshall,
George Peckham,
Jethro J. Peckham,
Oliver Read,
James Barker,
All of Middletown in the county of Newport.

Peleg Eldred,
Robert H. Watson,
Of Portsmouth.

Jonathan Coggeshall,
Richard Sherman,
Parker Lawton,
John Spooner,
Edward L. Sisson,
Samuel S. Peckham,
Levi Shearman,
John Shearman,
All of Portsmouth.

Joshua C. Durfee,
Charles Hambly,
Fobes Manchester,
James M. Gray,
David Seabury,
Edward Cook,
William R. Davenport,
Philip King,
Benjamin Corey,
Moses T. Lawton,
All of Tiverton.

David white,
Benjamin Grinnell,
Charles W. Howland,
All of Little Compton.

The attorney general moved the court that Thomas W. Dorr be brought into court.

The court order Thomas W. Dorr to be brought into court.

The jury called, and all answered to their names except Peleg Clarke, Stephen Southwick, Noah White, and William S. Vose.

Thomas W. Dorr brought into court.

William S. Vose, one of the absent jurors, called and answered to his name.

The counsel for the prisoner moved the court for process to be issued at the expense of the State for witnesses to be used in his defence.

The court decide that it is against the established rules, unless it can be shewn that the witnesses cannot be obtained without such process.

The counsel for the prisoner ask for further time to summon witnesses to be used on impannelling the jury.

The court decide to commence impannelling, and to go on as far as practicable.

And then the said Thomas Dorr being arraigned, and after hearing his indictment read, was asked if he still persisted in his former plea of not guilty? Answered that he did.

The Attorney General proposed certain questions to be put to the jurors as they were called, to ascertain their impartiality to sit in said cause.

Mr. Turner, for the prisoner, objected to two of the questions.

Argued to the court by Mr. Turner and Mr. Dorr for the prisoner, and by Mr. Bosworth and the Attorney General for the State.

The court being divided in opinion, the questions objected to are ruled out.

The court direct the following named jurors, to wit, Peleg Clarke, Stephen Southwick, and Noah White, to be fined for non-attendance.

The Attorney General moved the court for the privilege of putting a certain question to the jurors called, and examined as to their impartiality. Argued to the court.

Afternoon.—On motion, the court direct the prisoner to be brought in. Stephen Southwick affirmed, and examined with regard to his excuse for non-appearance as a juror. The court direct that no execution issue for the fine.

The court direct a venire to issue for twelve jurors. The court direct a venire to issue for twelve more jurors.

Sixth day of the term.

The court direct the prisoner to be brought into court. Prisoner brought in.

The sheriff returns the following named jurors on a writ of venire, viz:

William Earl Cook,	Henry Barker,
Rowland S. Oatley,	Theophilus Topham,
John H. Stoddard,	Benoni Weaver,
Edward Coggeshall,	Restcom Peckham,
William Wilson,	Thomas G. Rodgers,
William Sherman, of Job.	William Swan, jr.

List of names furnished the prisoner.

The court direct that such jurors as have been directed to stand by, be excused from further attendance at this court, and to be paid by the clerk.

Peleg T. Waite sworn as witness, relative to expressions made by Abner Tallman, a juror.

Peckham sworn as a witness.

Abner Tallman, juror, set aside.

Robert Seatle, juror, set aside.

Mr. Turner asks for further time to examine the list of jurors last furnished the prisoner.

The court order a venire to issue for twelve more jurors.

The court allow until this afternoon at three o'clock, for examination of first list of twelve jurors returned, and until Monday morning for the other twelve jurors.

The sheriff returned the following named persons as jurors, taken on a writ of venire, viz :

William B. Sisson,	Nathan Dennis,
Samuel Heath,	John Headly,
Albert Coggeshall,	Borden Chase,
John H. Coggeshall,	John Rodgers,
Sylvester Hathaway,	Noel Coggeshall,
Job H. Lawton,	Eleazer J. Read.

List of jurors furnished the prisoner.

Afternoon.—Sixth day.

Stephen B. Slocum sworn as to expressions made by Edward Coggeshall, a juror.

Peleg Almy, jr., sworn as a witness.

Mr. Turner objected, on the part of the prisoner, to the question put by the Attorney General.

Argued to the court by Mr. Turner for the prisoner, and by the Attorney General for the State.

The court direct the juror to be set aside.

William H. Cranston sworn as to expressions made by William Swan, jr.

William E. Cook objected to as a juror by the prisoner.

William H. Cranston, esq., sworn.

The court direct the juror to stand by.

William Wales sworn to keep the jury.

Seventh day of the term.

William Swan, jr., called as a juror.

Caleb S. Knight, sworn as a witness as to expressions made by the juror. Juror set aside.

The prisoner made objections to the array of jurors returned on Saturday at twelve o'clock, on account of alleged partiality and improper conduct of the officer who served the writ of venire.

Peleg Almy, jr., sworn as a witness. Question argued to the court by Mr. Bosworth and the Attorney General on the part of the State, and by Mr. Turner and the prisoner for the prisoner.

Mr. Turner moved the court for further time to examine the pannel returned this morning.

The court direct a venire for twelve more jurors to be returned forthwith.

John Tallman sworn as to the jurors returned on Saturday.

John Headly affirmed.

Nathan Dennis sworn.

Borden Chase, do.

Samuel Heath, do.

Job H. Lawton, do.

Afternoon.—Seventh day.

The court decide that the challenge to the array made this morning be not sustained.

Samuel Heath called as a juror and examined.

Peleg Almy, sworn as witness as to expressions made by the juror.

Question argued to the court by Mr. Turner for the prisoner, and by the Attorney General for the State.

Borden Chase called and sworn as a juror.

Joseph Paddock called and sworn as a juror.

Samuel Westcott called as a juror; objected to by the prisoner.

Milton Hall affirmed as a witness as to expressions made by the juror.

Benjamin H. Lawton sworn.

Nathan B. Hammett, do.

Question argued to the court by Mr. Turner for the prisoner, and by the Attorney General for the State.

The court decide to overrule the challenge.

Eighth day of the term.

Richard C. Norman sworn in on the pannel.

Benjamin I. Lawton called as a juror; objected to by the prisoner.

Abril Spencer sworn as to expressions made by juror.

George L. White sworn.

Juror set aside.

William D. Southwick sworn as a juror.

The following named individuals compose the jury, viz:

Joseph Paddock, jun.,	David Scanbery,
Benjamin Carr,	Benjamin Corey,
Asa Darol,	Charles W. Howland,
William L. Mellville, jun.,	Borden Chase,
William Card,	Richard C. Norman, and
Jonathan Coggeshall,	William D. Southwick.

The court appoint Joseph Paddock, jun., as foreman.

Cause opened to the jury by Mr. Bosworth on the part of Government.

Mr. Turned moved the court to decide that the overt act be first proved.

Question argued to the court.

The court overrule the motion.

Witnesses called and sworn for the Government:

1. Jeremiah Briggs,
2. William Burrow,
3. Levi Salisbury,
4. William H. Smith,

Afternoon.—Eighth day of the term.

5. Roger W. Potter, sworn,
6. Dutee J. Pearce,
7. William P. Blodget,
8. Edward H. Hazard,
9. Henry S. Hazard,
10. Orson Moffit,
11. Joseph S. Pitman,
12. George O. Bourne.

Ninth day of the term.

Witnesses sworn and examined for the Government.

13. Hiram Chappel sworn,
14. Jonathan M. Wheeler, do.
15. Leonard Blodget, do.
16. Nelson B. Aldrich, sworn,
17. Richard Knight, do.
18. Charles J. Shelley, do.

Afternoon.

19. Henry A. Kendall, sworn,
20. Silas A. Comstock, sworn,
21. Horace M. Pierce, do.
22. Benj. M. Darling, do.
23. John S. Despeau, do.
24. Willis Bowen, do.
25. Caleb E. Tucker, aff'd.

The court order that the original warrant to Col. Blodget be delivered to him on his leaving a certified copy therof.

Tenth day of the term.

Witnesses for the Government sworn.

26. Jedediah Sprague, sworn,
Dutee J. Pearce, re-examined,
27. Darius Hill, do.
28. George B. Aldrich, do.
29. Laban C. Wade, do.
30. Nelson Maxson, do.

Afternoon.

31. William H. Potter, sworn for the State.
32. General McNeil.

Mr. Turner moved the court for further time to prepare for the defence.

Eleventh day of the term.

STATE
vs.
T. W. DORR.

Jury called. Mr. Turner opened the defence on the part of the prisoner.

Witnesses sworn for the defendant.

1. Henry S. Hazard, re exam'd.
2. Charles W. Carter, sworn.
3. John S. Harris, do.

A question was put to the witness by the prisoner relative to the votes given for governor under the so called People's constitution; objected to by the Attorney General.

Argued to the court.

The court decide that the question is not relevant to the issue.

4. Benjamin M. Darling, re-examined.
5. Samuel W. Wales, sworn,
6. James Thurber, jun., sworn,
7. Burrington Anthony, do.
9. Kinsley B. Studley, do.

8. Josiah Read, sworn,
10. Thaddeus Simmons, do.
12. Benjamin B. Slade, do.
14. William J. Miller, do.
11. Joshua Hathaway, do.
13. William Potter, re-examined,
15. William S. Burgess, do.

Afternoon.

Mr. Turner moved the court for liberty to prove the validity of the People's constitution, (so called.)

The court decide that they cannot go into that question; it being wholly irrelevant to the matter at issue.

The prisoner's counsel summoned up the evidence on his part in the opening.

Mr. Turner offered a copy of the (so called) People's constitution, to prove that the government under it was republican in form.

Ruled out as inadmissible and irrelevant, by the court.

The prisoner offered a copy of the message delivered by him on the third of May, to the Foundry legislature.

The prisoner and his counsel offer to argue a question of law as to the jurisdiction of this court on a trial for treason against the State, and for liberty to argue the same to the jury.

The court overrule the motion, as far as relates to arguing the same to the jury.

Twelfth day of the term.

Mr. Turner introduced authorities to establish his argument against the jurisdiction of this court in cases of treason.

Afternoon.

Mr. Turner proceeded in the defence.

Thirteenth day of the term.

The prisoner commenced his argument in the close.

Afternoon.

Prisoner continued his defence.

The Attorney General closes on the part of the Government.

Afternoon.

The Attorney General finished his argument in the close.

The chief justice charged the jury.

Matthew Cozzens and William Wales sworn to keep the jury.

Jury retired.

The jury came into court, and being asked if they were agreed on a verdict, the foreman returned the following verdict: "We find the prisoner guilty in manner and form as charged in the indictment."

Jury discharged.

The court order the prisoner to be remanded.

Fourteenth day of the term.

The counsel for the prisoner moved the court for time to file a motion in arrest of judgment, and for a new trial.

The court order that the motion for a new trial and in arrest of judgment be filed by Wednesday week.

The court adjourned to the second Monday in June next, at three o'clock in the afternoon.

Fifteenth day of the term.

Court met pursuant to adjournment. George Turner, esq., of counsel for prisoner, moves the court for leave to amend the bill of exceptions to the verdict of the jury. Leave to amend granted.

George Turner, esq., reads the bill of exceptions.

Prisoner files his affidavit to facts stated in his bill of exceptions, and is sworn to the truth of the same.

Motion for new trial on the bill of exceptions argued to the court by George Turner, esq.

The first, second, and third exceptions in the bill of exceptions argued to the court on motion for new trial.

For the motion— GEORGE TURNER and SAMUEL Y. ATWELL, *Esqs.*

Against the motion— ALFRED BOSWORTH, *Esq.*, and JOSEPH M. BLAKE, *Esq.*, *Attorney General.*

Sixteenth day of the term.

Joseph M. Blake, esq., attorney general, moves the court that the exceptions contained in the bill of exceptions in the motion for new trial be argued consecutively.

Motion objected to by prisoner's counsel.

The court rule that the usual course be taken.

George Turner, esq., continues argument on motion for new trial.

Court adjourns to 2½, P. M.

Court met pursuant to adjournment. George Turner, esq., continues argument on motion for new trial.

Court adjourns to June 12, 1844, at nine, A. M.

Seventeenth day.

Court met pursuant to adjournment. George Turner continues argument on motion for new trial.

Court adjourns to three, P. M.

Court met pursuant to adjournment. George Turner, esq., continues argument on motion for new trial.

The court rule that no testimony shall be introduced in relation to any expressions made by, or partiality of, the jurors.

George Turner, esq., concludes argument on motion for new trial.

Joseph M. Blake, esq., attorney general, commences argument against motion for new trial.

Court adjourns to June 13, 1844, at nine, A. M.

Eighteenth day.

Court met pursuant to adjournment. Joseph M. Blake, esq., attorney general, concludes argument against motion for new trial.

George Turner, esq., commences argument in the close on motion for new trial.

The court rule that no evidence be introduced on the part of the prisoner to prove that the sheriff made improper return on the venire facias for jurors.

George Turner, esq., concludes argument on motion for new trial.

Prisoner makes a few remarks in explanation.

Court adjourns to 3, P. M.

Court met pursuant to adjournment. The court intimates that they are not prepared at this time to give an opinion on the motion before them.

Court adjourns to June 14, 1844, at nine, A. M.

Nineteenth day.

Court met pursuant to adjournment. The court overrule the motion for new trial.

The prisoner moves in arrest of judgment.

George Turner, esq., reads the motion.

Samuel Y. Atwell, esq., moves the court to assign some future day for the trial of the motion.

The motion objected to by the Atty. General and A. Bosworth, esq.

Prisoner stated to the court that the delay was not asked for on his own account, but on account of the inability of Mr. Atwell, at this time, to argue the motion.

The court rule that the trial of the motion shall go on now. That Mr. Atwell may, at some future time, argue in writing on the motion in the close, and that the court would adjourn to some future day to hear it.

George Turner, esq., argues on motion in arrest of judgment.

Joseph M. Blake, esq., opposes motion in arrest of judgment.

Court adjourns to the fourth Monday in June, 1844, at ten, P. M.

Twentieth day.

Court met pursuant to adjournment. George Turner, esq., reads written argument in the close of the motion in arrest of judgment.

Court have a recess until two, P. M. Two, P. M., court met.

Samuel Y. Atwell, esq., concludes argument on motion in arrest of judgment.

Court have a recess until five, P. M. Five, P. M., court met.

Court overrule motion in arrest of judgment.

Joseph M. Blake, esq., att'y gen., moves that the prisoner be sentenced according to law.

Samuel Y. Atwell, esq., of counsel for prisoner, gives notice that he shall move the court to suspend sentence until a bill of exceptions to the ruling of the court on the trial, "that treason was an offence that could be committed against a separate state;" and also for the same ruling upon the motion for a new trial, in order to the suing out a writ of error from the Supreme Court of the United States, can be prepared and tendered for allowance by the court.

Court adjourned to June 25, 1844, at nine, A. M.

Twenty-first day of the term.

Court met pursuant to adjournment.

Joseph M. Blake, esq., att'y gen., renews the motion that Thomas W. Dorr be now sentenced according to law.

The court call upon the prisoner, if he has any thing to say why sentence should not now be pronounced.

The prisoner makes a few remarks.

The court sentence the prisoner.

Sentence.

The sentence of the court is, that said Thomas Wilson Dorr be imprisoned in the State's prison at Providence, in the county of Providence, for the term of his life, and there kept at hard labor in separate confinement.

Samuel Y. Atwell, esq., of counsel for prisoner, moves the court for leave to file a bill of exceptions against the ruling of the court, during trial, "that treason might be committed against a separate State," and that the court allow and sign the same.

The court order the bill of exceptions to be entered on the minute book.

Bill of exceptions.

Be it remembered, that upon the trial of the aforesaid indictment, upon issue joined before the jury duly impannelled to try the same, it was dcontended, in behalf of the defendant, that under the Constitution an laws of the United States, the crime of treason against a State could not be committed against a separate and several States of the Union, but against the United States only. And that the statute of Rhode Island, passed January, 1838, entitled "An act concerning crimes and punishments, chapter first, for defining and punishing treason against the State of Rhode Island and Providence Plantations, is repugnant to the Constitution and laws of the United States; and it was also further contended, that the defendant could not be tried and punished by said court for the crime of treason against the State of Rhode Island and Providence Plantations, by reason of the exemptions contained in the third section of the third article of the said Constitution of the United States, and requested the court so to instruct the jury, which the court then and there refused to do; and, on the contrary, did instruct the said jury, that the said crime of treason might be committed against a separate and individual State, and could well be tried and punished as such; to which refusal of the court so to instruct the jury as prayed for, as well as to the instruction so as aforesaid given by the court to the jury, the defendant excepting, prayed the exception to be allowed by the court. And after the said instructions were so refused, and so given as aforesaid, the jury withdrew, and afterwards returned their verdict of guilty against the defendant. And inasmuch as the said several matters of law, insisted on and objected to on the part of the said defendant and his counsel i

manner aforesaid, do not appear by the record and verdict aforesaid, the counsel for the defendant did then and there propose the aforesaid exceptions to the said refusals and opinions of said court, and requested them to put the seal of said court to this bill of exceptions, containing said several matters so urged and so refused as aforesaid.

NEWPORT, *Sc.*

Supreme Court, August term. Holden by adjournment on the 4th Monday of February, 1844.

THE STATE
vs.
THOMAS WILSON DORR.

And the said Thomas W. Dorr, in his proper person, after indictment found, and before plea pleaded, comes and defends the force and injury, &c., and says, that the honorable court here ought not further to take cognizance of, or to try the indictment aforesaid thereof found against him at the August term of the honorable supreme judicial court, 1842, sitting in the aforesaid county of Newport, because he says, that by the laws of the land this honorable court have not jurisdiction given them for the trial of said indictment in the aforesaid county of Newport, unless the said court, for good cause, shall first have removed for trial said indictment from the county of Providence, in which last mentioned county the offences charged in said indictment are alleged to have been committed, to said county of Newport. And that this honorable court can lawfully try the indictment aforesaid against him, the said Thomas W. Dorr, only in said county of Providence, unless removed as aforesaid to some other county in the aforesaid State of Rhode Island, &c.; and this he is ready to verify. Wherefore he prays judgment, if the court here will take further cognizance and jurisdiction of the said indictment for trial as aforesaid.

THOMAS W. DORR.

NEWPORT, *Sc.*

At the supreme court of the State of Rhode Island and Providence Plantations, holden at Newport, within and for the county of Newport, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and forty-three, and by adjournment on the fourth Monday of February, in the year of our Lord one thousand eight hundred and forty-four.

In the indictment.

THE STATE
vs.
THOMAS WILSON DORR. } For treason.

And Joseph M. Blake, attorney general as aforesaid, who prosecutes in this case for the said State, in behalf of said State saith, that notwithstanding any thing by the said Thomas Wilson Dorr above in

pleading alleged, the court here ought not to be precluded from further taking cognizance of, and trying the indictment aforesaid; because he saith, that the said plea, and the matters and things therein contained, are not sufficient in law, and that the said Attorney General, in behalf of the said State, is not bound by the laws of the land to reply to the same; and this in behalf of said State he is ready to verify. Wherefore he prays judgment, that the said Thomas Wilson Dorr may be held to answer to said indictment.

JOSEPH M. BLAKE,
Attorney General.

And the defendant joins in demurrer.

THOMAS W. DORR.

NEWPORT, *Sc.*
Supreme judicial court, August term, 1843, sitting by adjournment on the 4th Monday of February, 1844.

Indictment.

THE STATE
vs.
THOMAS WILSON DORR.

And now on the eleventh day of the term, the said Thomas Wilson Dorr, after plea pleaded, and demurrer filed thereto by the Attorney General in the name and behalf of the State, and joinder in demurrer on the part of the defendant, the defendant here moves the court for a rule upon the said Attorney General, to shew cause why the said demurrer should not be set down for argument upon the coming in of the court to-morrow morning.

THOMAS W. DORR,
By S. Y. ATWELL,
Of Counsel.

NEWPORT, *Sc.*
Supreme Court, March term, 1844.

Indictment.

THE STATE,
vs.
THOMAS W. DORR.

I challenge the array in this case for manifest partiality in the officer by whom the same was returned, because George Howland, a deputy sheriff of this county, who was charged with the service and return of the writ of venire for additional jurors, unmindful of his duty in that behalf, and to the great and manifest prejudice of this traverser in obtaining a fair trial by an impartial jury, did, on the night of the twenty-sixth of April instant, take with him, to advise with and assist him in his said duty, William H. Cranston, esq., an attorney and counsellor at law, and an officer of this honorable court, whose frequently expressed opinions are inimical to the traverser, and who, ever since the commencement of the present trial, has acted apparently as an attorney with, and in the em-

ployment and under the direction of, the Attorney General ; and has summoned witnesses at his request in behalf of the State from remote parts of the island. Because the jurors, returned on the writ of venire aforesaid by the said George Howland deputy sheriff as aforesaid, and constituting said array, were so returned at the nomination and suggestion of the said William H. Cranston.

And because the return upon the said writ of venire is in the proper handwriting of the said William H. Cranston.

THOMAS W. DORR.

Supreme Court, March term, 1844. In the case.

Indictment.

THE STATE,
vs.
THOMAS W. DORR.

Be it remembered, that upon the trial of the aforesaid indictment, upon issue joined before the jury duly empannelled to try the same, it was contended, in behalf of the defendant, that under the Constitution and laws of the United States the crime of treason against a State could not be committed against a separate and several State of the Union, but against the said United States only; and that the statute of Rhode Island, passed in January, 1838, entitled " An act concerning crimes and punishments," chapter first, for defining and punishing treason against the State, is repugnant to the Constitution and laws of the United States; and it was also further contended, that the defendant could not be tried and punished by said court for the crime of treason against the State of Rhode Island and Providence Plantations, by reason of the exemptions contained in the third section of the third article of the said Constitution of the United States, and requested the court so to instruct the jury, which the court then and there refused to do; and, on the contrary, did instruct the said jury that the said crime of treason might be committed against a separate and individual State, and could well be tried and punished as such ; to which refusal of the court so to instruct the jury as prayed for, as well as to the instruction so as aforesaid given by the court to the jury, the defendant excepting prayed the exceptions to be allowed by the court. And after the said instructions were so refused and so given as aforesaid, the jury withdrew, and afterwards returned their verdict of guilty against the defendant.

And inasmuch as the said several matters of law, insisted on and objected to on the part of the said defendant and his counsel in manner aforesaid, do not appear by the record and verdict aforesaid, the counsel for the defendant did then and there propose the aforesaid exceptions to the said refusals and opinions of said court, and requested them to put the seal of said court to this bill of exceptions, containing said several matters so urged and so refused as aforesaid.

NEWPORT, *Sc.*

Supreme Court, March term, A. D. 1844.

Indictment.

THE STATE, }
vs.
THOMAS W. DORR. }

And now, on this fourteenth day of the term of said court, after verdict and before sentence, the said Dorr moves the honorable court that said verdict may be set aside, and that no judgment be rendered thereon, and that a new trial of the said indictment may be awarded to him by the same, for the reasons following, viz :

1. Because Joseph Paddock, jr., the foreman of the jury, and also William L. Melville, jr., and Benjamin Carr, members of the jury, before the jury were empannelled, had each of them formed opinions of the guilt of the defendant, and had expressed such opinions, and in terms of prejudice and crimination towards the defendant personally, thereby manifesting towards him feelings of vindictiveness and hostility, that disqualified them to act as impartial jurors.

2. Because Abner Tallman, who was called for a juror, and testified that he had neither formed nor expressed an opinion upon the charges laid in the indictment, and was otherwise competent, was set aside upon insufficient testimony.

3. Because a challenge against Samuel Westcott for cause by the defendant, as having formed and expressed an opinion of the guilt of the prisoner generally, though not upon the charges as specifically set forth in the indictment, was overruled by the court, and the defendant was compelled to set him aside by a peremptory challenge.

4. Because the writ of venire for twelve additional jurors, issued on Friday the 26th day of April, A. D. 1844, and served and returned by George Howland, a deputy sheriff of said county of Newport, was wrongfully and illegally served and returned, in that the jurors returned on the said writ of venire, or some of them, were so returned at the nomination and suggestion of William H. Cranston, esq., an attorney and counsellor at law, and an officer of this court, whose frequently expressed opinions are inimical to the traverser, and who, since the commencement of the present trial, has acted apparently as an attorney with, and as an agent in the employment and under the direction of, the Attorney General, and has summoned witnesses in behalf of the State from remote parts of the island ; and a material portion of the testimony to prove said allegation having come to the knowledge of the traverser since the filing of his original challenge to the array of the jury so illegally returned, and since the verdict in this cause.

5. Because neither the defendant nor his counsel was furnished with copies of either of the four last pannels of jurors, returned upon writs of venire two full days before the said jurors were called and sworn as the defendant was entitled to be ; and in one instance he was furnished with a copy of a return only about three hours before the time

of canvassing the same in court, whereby the defendant's right of challenge for cause was greatly and injuriously abridged.

6. Because, before a full jury was sworn, the defendant's counsel moved the court to permit the defendant to recall his peremptory challenges to six of the persons examined for jurors and set aside, and to challenge said persons for cause, upon proof to be produced of their incompetency, which motion was denied by the court.

7. Because the defendant was not furnished with, although he seasonably applied for a list of the government witnesses, two full days before the trial of said indictment commenced, as he was entitled to be; and because several witnesses were sworn and examined of whom he had no previous notice whatever.

8. Because, before any evidence was introduced to prove either of the overt acts laid in the indictment, the court permitted evidence to go to the jury of acts done by the defendant, and others, at a period of time long before the first overt act charged in said indictment.

9. Because the prosecutor was permitted to offer to the jury proof of acts in aggravation of the charges in the indictment, in which the defendant had no part, and of which he had no knowledge.

10. Because the court would not permit the defendant to justify himself by offering to the jury the votes given by the people, and other testimony, to prove the adoption of the people's constitution in December, 1841, by a majority of the adult male citizens of the United States resident in this State; and to prove that, under said constitution, and according to the provisions thereof, in April, 1842, the defendant was duly elected Governor of this State, although the prosecutor admitted that, "if the defendant was Governor, he had a right to do all that he did," and was permitted to introduce evidence to prove that, on the 3d day of May, 1842, in a general assembly sitting in Providence, the defendant took an oath as Governor of the State, and openly and avowedly acted and was treated as such by said assembly.

11. Because the court, after the testimony recited in the preceding 10th specification had been ruled out, when offered to justify the acts and proceedings of the defendant, also refused to permit the defendant to offer the said testimony, to repel the charge of malicious and treasonable motives and intentions as laid in the indictment.

12. Because the court refused to permit to pass to the jury a copy of the people's constitution, to shew that a republican form of Government was provided for in the same, according to a guaranty in the Constitution of the United States.

13. Because the court would not permit the defendant or his counsel to argue to the jury the several matters of law deemed important to his full defence, and especially the following, viz:

1. That in this country treason is an offence against the United States only, and cannot be committed against an individual State.

2. That the 4th section of the act of Rhode Island, of March, 1842, entitled "An act relating to offences against the sovereign power of the State," whereby indictments may be found out of

the county where said offences are charged to have been committed, is unconstitutional and void, as destructive of the common right of trial by jury, which was a fundamental part of the English constitution at the time of the Declaration of American independence, and has ever since been a fundamental law in Rhode Island.

3. That said act, if constitutional, gives this court no jurisdiction to try this indictment at that time, in the county of Newport —all the overt acts being therein charged as committed in the county of Providence, where the defendant is by law entitled to be tried.

4. That in law the defendant acted justifiably as Governor of the State under a valid constitution rightfully adopted, which he was sworn to support.

14. Because the court overruled the first point in the preceding 13th specification, and instructed the jury that treason might be committed against an individual State.

15. Because the court refused to hear at that time any argument from the defendant or his counsel upon the 2d, 3d, and 4th points in said 13th specification, and instructed the jury that the defendant might well be tried here for acts alleged to have been committed in the county of Providence, and could not have been justified by any evidence offered by him in acting as Governor of the State.

16. Because the court then refused to hear an argument from the defendant or his counsel, to shew that in capital cases the jury are judges both of the law and of the facts, and misdirected the jury in charging them that they were not the judges of the law and of the facts in said case, but were bound by their oaths to take the law as laid down by the court, and were no farther judges of it than simply in applying it as given to them by the court, to the facts which they deemed proved in the case.

17. Because the court misdirected the jury in charging them that the only question of intention on the part of the defendant, which under their oaths they could consider, was whether the defendant, at the times laid in the indictment, intended to commit the acts charged against him in the same.

18. Because the officers charged with the service of writs of venire for the return of one hundred and eight jurors, selected and summoned the whole number, except one, from the members of one political party in the State, whose political feelings and prejudices are inimical to the political party to which the defendant is attached, and to the defendant himself.

THOMAS W. DORR,
By GEORGE TURNER,
His Attorney.

NEWPORT, *Sc.*

Supreme Court, March term, A. D. 1844.

Indictment.

THE STATE
vs.
THOMAS W. DORR. } On motion for new trial.

And now, on this fifteenth day of the term, the said Dorr, on solemn oath, declares and says, that he verily believes and expects to prove, that Joseph Paddock, jr., William L. Melville, jr., and Benjamin Carr, three of the jurors empannelled to try said indictment, and who rendered a verdict thereon against him of guilty, had each of them, before they were sworn on said jury, formed and expressed an opinion of his guilt of the offence charged in said indictment, and unfavorable to him personally and generally; and that this affiant had no knowledge of the fact that either of said jurors had so done, whereon to ground a challenge for cause against either of them, until after they had been empannelled; and no knowledge in relation to the ground of challenge against said Paddock and Carr, until after said verdict had been rendered as aforesaid.

THOS. W. DORR.

Sworn to in open court.

WM. GILPIN, *Clerk.*

NEWPORT, *Sc.*

Supreme Court, March term, A. D. 1844.

Indictment.

THE STATE
vs.
THOMAS W. DORR. } On motion for new trial.

And now, on the seventeenth day of the term, the said Dorr, on solemn oath, declares and says, that upon a challenge to the array made on the trial of said indictment, and overruled by the court, this affiant has new and further evidence in its support, which has come to this affiant's knowledge since the verdict in said cause was rendered, and of which he was then ignorant.

THOS. W. DORR.

Sworn to in open court.

WM. GILPIN, *Clk.*

Eighteenth day, filed.

WM. GILPIN, *Clk.*

NEWPORT, *Sc.*

Supreme Court, March term, A. D. 1844.

In the case of the indictment.

THE STATE
vs.
THOMAS W. DORR. } For treason.

And now, on this nineteenth day of the term, after verdict given and before judgment rendered in said cause, the said Thomas W. Dorr

here moves this honorable court to arrest the judgment to be rendered on said verdict for the following objections and causes of error, which arise upon the face of the record of said cause here remaining:

First. Because it appears by the indictment, that the offences charged to have been committed by the said Dorr are charged to have been committed by him in the county of Providence, and the said indictment is found and returned a true bill by a grand jury composed of citizens of the county of Newport, summoned, sworn, and empannelled as the grand inquest of said last mentioned county, and not otherwise, and *and* by them returned for trial to this honorable court at their August term, 1842.

Second. Because it appearing by said indictment as aforesaid, it also further appears by the record aforesaid, that the said Thomas W. Dorr was tried and convicted of the several offences charged against him in said indictment at the present session of this honorable court, held in and for said county of Newport, and by a jury composed of citizens of said county, summoned, empannelled, and sworn as such, and not otherwise; all which is contrary to law. Wherefore he moves the court here to arrest the judgment in said cause.

THOMAS W. DORR.

NEWPORT:

Supreme Court, March term, A. D. 1844.

Indictment.

THE STATE
vs.
THOMAS WILSON DORR.

And now on the nineteenth day of the term, after a full hearing of the said Thomas W. Dorr and his counsel, on his motion filed on the fourteenth day of the term to set aside the verdict against him, and that no judgment be rendered thereon, and that a new trial of said indictment may be awarded to him.

The court order and decree, that the said motion be overruled for the insufficiency of the reasons set forth in said motion.

The prisoner has assigned various reasons for setting aside the verdict in this cause, six of which relate to and are objections to the jury. These will be considered in the close.

The prisoner's fifth reason is, that he was not furnished with copies of the four last panels of jurors in this cause two full days before they were called and sworn.

It has never been the practice of this court to order copies to be furnished two full days before the jurors are called, because they have never understood, nor do they now understand, that there is any law in the State requiring them to be so furnished.

The court have in all cases given what they deemed a reasonable time, and have extended the time when necessary or proper so to do.

On the venire returned at nine o'clock, A. M., of the twenty-seventh

of April, the prisoner was allowed until three o'clock, P. M., at which time he made no suggestion that he was not fully prepared to proceed, or that he desired more time to examine the list. Nor does it now appear that the time allowed was not reasonable and sufficient for the proper defence of the prisoner, or that he would have challenged, for cause or otherwise, any other of the jurors on that venire, than those whom he then challenged.

Another reason for setting aside the verdict assigned by the prisoner as his seventh, is that he was not furnished with a list of the Government witnesses two full days before the trial commenced.

The prisoner at most could demand, and that only *ex gratia*, the names of the witnesses on whose testimony the indictment was found. With these he was furnished, and with most of the other witnesses for the Government. No objection was made at the trial on this account, nor does it appear that the prisoner has lost any thing, or been in any way prejudiced, nor is it suggested.

The eighth and ninth reasons are objections to the admission of testimony.

Objection was made at the trial to the introduction of any evidence on the part of the Government as to the treasonable intent, until they had first proved the overt act.

This was a mere question as to the order in which the evidence should be introduced, and the court are still of opinion, that it was properly left to the discretion of the prosecuting officer, and the opinion is supported by that of Chief Justice Marshall on the trial of Burr.

The other objection to the admission of evidence is, that the prosecutor was permitted to prove the acts of others in aggravation of the charges in the indictment.

This objection was made at the trial to the testimony of Shelley, as its object was understood by the prisoner's counsel.

The evidence, however, was not offered nor admitted in aggravation, but in order to shew the warlike and treasonable character of the assemblage at Chepatchet, of which the prisoner assumed the military command, and as introductory to the proof of the prisoner's connection with them, and of his joining in the conspiracy; and as such was competent and proper evidence.

In his tenth, eleventh, and twelfth reasons, the prisoner objects that certain evidence offered by him was rejected.

The prisoner on the trial offered to prove the adoption of a constitution, called the People's constitution, in December, 1841, by a majority of the adult male citizens of the United States resident in this State.

First. By the testimony of John S. Harris, a witness produced on the stand; and, secondly, by offering to the jury the votes given for said constitution.

This evidence was properly ruled out as being an offer to prove the existence of a law of this State.

The court are bound to take notice judicially, without resort to a jury, of the existence of all public statutes, which it is their duty to ad-

minister, and of the constitution, written or unwritten, under which they act, and which they are sworn to support; and they know of no rule of law whereby they can permit parol evidence to pass to the jury, of the existence of any law of the State either constitutional or statute. Neither do they know of any rule of law by which a jury can be permitted to receive and count votes, either to determine an election of governor, the adoption of a constitution, or the passage of a statute. The court are also bound to take notice who was, and who is, the Governor of the State under the constitution and laws thereof.

The other matter offered to the jury, and ruled out, was the copy of said constitution.

This was properly ruled out as immaterial, and not tending either to prove or disprove either the treasonable intent or the overt act.

The thirteenth reason assigned by the prisoner for a new trial is, that he was not permitted to argue certain matters of law to the jury.

It is the duty of this court, and of every court, to determine all matters of law; and wherever the matters of law can be eminently separated from the matters of fact, solely to determine them. This is the general tenor of the authorities cited as well by the prisoner as by the Attorney General. And by the constitution and laws of this State this court are required in all trials to instruct the jury in the law.

The two first questions of law, proposed by the prisoner's counsel to be argued to the jury, were questions of pure law.

The prisoner and his counsel were therefore properly required to address the court upon them, as the tribunal which must and ought to decide upon them.

And as to the last question proposed to be argued to the jury, viz: "That in law the defendant acted justifiably, as Governor of the State under a valid constitution, rightfully adopted, which he was sworn to support."

The prisoner's counsel proposed to justify the acts of the prisoner by the fact that he was Governor of the State.

As to this fact no evidence had passed to the jury, nor had any legal evidence been offered for that purpose, and the question of law introduced was a point of constitutional law, viz: Whether the People's constitution, so called, was the supreme law of the State, and stood alone, and should have been argued to the court.

In the fifteenth reason assigned by the prisoner, he objects that the court refused to hear, at that time, any argument upon the second and third matters mentioned in his thirteenth reason; and in his sixteenth reason, objects that the court also refused to hear at that time any argument on the question mentioned in that reason.

It is the practice of all courts to consider some points of law as settled, and not open to discussion in every trial that takes place; and it has been the practice of this court to consider such questions as have been elaborately and fully argued by counsel, and deliberately determined by the court itself, although in another case, as settled, and the question closed, not to be reargued in the progress of a jury trial.

Such were the questions before referred to. They had been settled and determined by this court.

As to the point which the prisoner's counsel proposed to argue to the court, viz: "That in law the prisoner acted justifiably, as Governor of the State under a valid constitution, rightfully adopted, which he was sworn to support." The only question of law involved in it, and the only one, as the court understood, which the counsel proposed to argue, was, whether the People's constitution (so called) was the law of the land or not; and this question had been by the court deliberately determined in a previous case on solemn argument; and the point of law could arise only upon the fact that the prisoner was Governor, as to which there was no legal proof in the cause.

The court, notwithstanding they considered these points fully settled and closed, stated to the prisoner that they would hear the prisoner, or his counsel, on these points, if it should become desirable, after verdict.

The prisoner, as further reasons for a new trial in the cause, objects that the court misdirected the jury on the certain points of law.

First. In charging the jury, "that treason may be committed against a State."

In this direction the court see no error. This point was argued at length on the trial, and again on this motion; and the court think the charge on this point fully sustained by the authorities referred to in the charge.

Second. That the court erred in directing the jury, "that they were not the judges of the law and of the facts in this case, but were bound by their oaths to take the law as laid down by the court; and were no further judges of it, than simply in applying it as given to them by the court to the facts which they deemed proved in the case."

The court in this case, as they have in all other criminal cases where the question has been raised, charged the jury that it was the duty of the court to decide what should pass to the jury as law, and what should not pass—they being the tribunal to decide what the law was touching the charge in the indictment. That it was the duty of the jury to scan the evidence before them and ascertain what the facts were, and having ascertained the facts, they were to apply the law which had been given them to the facts thus ascertained, and then, acting as judges both of the law and the evidence, return a verdict as to them, deciding under their oaths [what] might appear to be right. And in this the court see no error.

Third. That the court misdirected them in charging them, "that the only question of intention on the part of the prisoner which they could consider was, whether the prisoner, at the times laid in the indictment, intended to commit the acts charged against him in the same."

The direction of the court was in substance, that the treason charged was by levying war against the State; and then in substance charged the jury what acts would constitute a levying of war against the State; and that if there were an assemblage of armed men, arrayed in military manner, provided with implements of war, and thus arrayed with a de-

sign forcibly of overturning the government of the State, and of setting up a new government, or of taking possession by force of the public property of the State in possession of the force of the State, it would be a levying of war against the State; and if the prisoner was leagued with the assemblage, and performed a part with them, he would partake of the guilt of such assemblage. But did not otherwise charge the jury as to the intent of the prisoner in committing the acts charged against him.

The jury were left to inquire with what intent the men were arrayed, and whether the prisoner entered into their designs.

Fourth. That the court erred in charging the jury that the prisoner could not have been justified, by any evidence offered by him, in acting as Governor.

The prisoner offered no legal evidence of his having been Governor; and the court charged the jury, that the fact that the prisoner believed himself to have been Governor would not justify his acting as such, and though it might extenuate the offence, it would not take away the legal guilt.

They also charged the jury that the Peopie's constitution (so called) was not the law of the land, and that, acting judicially, they could not recognise it as such.

The prisoner also urges certain objections to the jury, and to the manner of impannelling it, as reasons for a new trial in this cause.

His second and third reasons are to this point, and are similar. The one is, that Abner Tallman, who was called for a juror, was set aside upon insufficient testimony. The other is, that Samuel Westcott, another person called for a juror, was not set aside upon the evidence produced in support of the prisoner's challenge for cause.

The court are not now satisfied that they did not at the time give to the evidence produced in each of these cases its due weight.

Another objection to the manner of impannelling the jury, as set forth in the sixth reason—that the court refused to permit the defendant to recall his peremptory challenges to six of the persons examined for jurors and set aside, and to challenge said persons for cause, upon proof to be produced of their incompetency, though the prisoner moved the court for leave so to do before a full jury was sworn.

The court pursued their usual course in discharging jurors challenged and set aside; and had discharged all the jurors who had been challenged and set aside, including the said six jurors; no suggestion at the time being made, that the prisoner objected or would object to such discharge, they could not legally be recalled, and the prisoner's motion was necessarily denied. The propriety of discharging jurors, under such circumstances, the court do not doubt.

Had the prisoner made his motion before the discharge of the jurors, it would have been entertained by the court; but the court are not prepared to say that the prisoner had the right contended for.

Two other reasons were urged to the court for a new trial, both of which were disposed of, during the pendency of the motion, incidentally. The first was as follows: "Because Joseph Paddock, jr., the

foreman of the jury, and also William L. Melville, jr., one of the jury, before the jury were impannelled, had each of them formed opinions of the guilt of the defendant, and had expressed such opinions, and in terms of prejudice and crimination toward the defendant personally, thereby manifesting toward him feelings of vindictiveness and hostility, that disqualified them to act as impartial jurors."

Upon the opening of the ground for a new trial the Attorney General objected to the introduction of any evidence to establish the facts set out in it, on the ground that the whole motion being addressed to the discretion of the court, and the verdict being rendered in accordance with the law and the evidence, the court ought not to set aside the verdict and grant a new trial; it appearing from that circumstance that the jurors could not have been biased, in the verdict given, by the opinions or expressions atttributed to them.

After a full hearing of the prisoner and his counsel, and a full examination of the authorities adduced, the court sustained the objection made by the Attorney General. They do not doubt their power to grant a new trial in a capital case on motion of a prisoner after conviction. The statute confers full power, limited only by the discretion of the court. Every motion of the kind is therefore addressed to their discretion, and it is their duty on every such motion to examine the whole case as it was presented to the jury. Upon such examination, the case in question appeared to be one of a very singular nature and character, and in exercising their discretion they could not be aided by precedents.

During the trial the prisoner offered evidence to establish the facts, the overt acts charged against him, without proof of which he must have been acquitted, and in his argument to the jury, expressly admitted that he did the acts charged.

He says in his argument: "I have labored to bring out all the facts of all that was done at Acots or at Federal Hill. I deny nothing." Again: "I believed that a government on paper was no government at all; my recommendation was to take possession of the public property, and the issue would have been tried at once." Again, in reference to the interview with General McNeil, he says: "The offer I made to him of the command was half in jest and half in earnest." Again, in reference to the transactions at Federal Hill and the Arsenal, on the seventeenth and eighteenth of May, he says: "At that time there was a strong feeling manifested in favor of taking possession of the property of the State; the military force of the State was offered me, and I resolved to make the attempt. I resolved to possess myself of the Arsenal, as that would have been a decisive step, and one which would have placed in the hands of my party the power of the State. I gave the order to attack and to fire upon the building." Again: "Through want of discipline our men fell off, and the whole force was dissolved. I left town, but if there had been a favorable turn in affairs, I should have returned." Again, as to the transaction at Chepatchet, he says: "The meeting at Chepatchet was premature. I had previously written to the military officers, requesting them to hold a council, and not act

prematurely." Again: "The fortifications on the hill were very slight, and did not surround the hill; the hill itself was untenable, being commanded by several other heights. I was now there, and a movement had been made. It became necessary to endeavor to maintain our position. On Saturday afternoon I ordered a return to be made of the number of men on the hill." Again: "Persons were continually coming and going; but, on Monday, all who took arms were compelled to stay. Mr. Knight was taken as a spy and brought before me." In fact, at the trial, the prisoner denied no material fact, but based his defence upon the want of proof of the treasonable and malicious intent alleged in the indictment.

The intent which the prisoner then avowed was to set up the People's constitution, (so called,) and to carry into effect a government under it, and not to pull down the Charter government, which he contended had been dissolved by the constitution referred to.

The court, in the exercise of what they then believed and still believe an imperative duty, refused to pass to the jury any evidence as to the existence of that constitution; and charged the jury, in substance, that acting judicially the court could not recognise it as the law of the land; and that no evidence had passed to them of its adoption, or of the election of the prisoner as Governor under it, and that they could only find their verdict upon the evidence which had passed to them.

With these facts admitted before them, and these rules of law laid down to them by the court as the general principles of law applicable to the case on trial, it is difficult to see how any jury could have returned any other verdict than that of guilty. In relation to the facts there was no controversy at the trial, nor is there any now pretended.

The prisoner now here upon the trial of this motion, does not pretend that any evidence would, under the ruling of the court, alter the fact. He admits the facts as they were then proved.

The prisoner admitted, as he now admits, his intent to have been to effect an object which the court charged the jury was treasonable.

The jury, therefore, to have returned any other verdict, must have doubted facts admitted by both parties to be true, or assumed to overrule the opinions of the court on naked principles of law, and to establish as law what the court did not then, nor do they now, believe to be law.

The effect of granting a new trial would therefore be of no avail to the prisoner, unless he could induce a second jury to disregard their plain duty, and return a verdict against their oaths.

Under these circumstances, the evidence offered by the prisoner in support of this reason was ruled out as immaterial.

The other reason urged by the prisoner, and disposed of incidentally, related to the challenge to the array in the course of impannelling the jury.

The challenge was made on the ground, generally, that the jurors were summoned and returned at the nomination of a third person, assumed to be unfriendly to the prisoner.

Upon this point the prisoner offered testimony, upon examination of which the court decided that the challenge should be overruled, the facts not being established by the witnesses produced.

The prisoner now moves for a new trial for the error then made by the court in overruling the challenge, and now offers further evidence in support of the facts upon which the challenge was made.

Upon stating the matter expected to be proved, the evidence appeared to be cumulative only, and which, if taken in connexion with the evidence formerly offered to the same point, would not furnish sufficient ground from which to draw a legal inference that the jurors were summoned and returned at the nomination of any person other than the officer charged with the service of the venire.

The court regret that in the reasons for a new trial before referred to, several inaccuracies occur as to the rulings and charge of the court. A part of these are corrected in the opinion here given, and the charge itself is annexed that no further mistakes may be made in relation to it.

GENTLEMEN: In delivering the charge in this case, I shall confine myself very strictly to the notes which I have prepared for the purpose; making, however, such remarks in illustration of the general propositions which may be advanced as may seem necessary, in order to make them more intelligible. I take this course that we may not be misunderstood here, nor misrepresented elsewhere, without having it in our power to apply a corrective.

We find it necessary in this case to guard against misrepresentation; not particularly against misrepresentations made to the people of this State, who know us; but against those which may be made to the people of the United States, and perhaps to posterity. For no one wishes to disguise it; aye, let it be proclaimed to the whole world, and through all time to come, that the principle which is involved in this issue, lies at the very foundations of all political and social institutions; and that upon your verdict does the future confidence of all considerate men, in the durability and safety of our institutions, depend. We have, therefore, some ambition to appear as we really are.

The constitution of this State, and the act under which this court is organized, make it our duty to deliver to the jury, in all cases, the law in charge—no very desirable responsibility in any case; least of all in one that has so roused the passions and deeply stirred and agitated the popular mind—but bound from the nature of our organization as a court, and with the oath of God upon us, we shrink from no duty, we recoil from no consequences.

In discharging this duty, (I speak not for myself merely, but for the court,) it is of some importance to know what the duties of a court are, and what the duties of a jury are; for they cannot be one and the same in relation to the same case. If it be our duty to decide what the general law of the land is, it is not your duty also to decide it. If it be your duty to ascertain what the facts are, and then apply the law to the facts as you find them, it is not our duty to do the same. A judi-

cial tribunal, which is but a growth of the wisdom of ages, is not so absurdly constituted, as necessarily to bring the court into conflict with the jury, and the jury into conflict with the court, and thus to defeat all the ends of justice. If such were the state of things, we could have no law: what the court did, the jury might undo; what the jury did, the court might undo; and thus at the very heart of the system would be found in full operation the elements of anarchy and discord.

Let us see if our duties are so jumbled together, that we as a court can perform the duties of a jury, and you as a jury can perform the duties of a court. It is the duty of this court, and of all other courts of common law jurisdiction, to decide upon what evidence shall pass to the jury, and what shall not. Questions as to what is evidence, and what not, will arise; and in all time it has been made the duty of the court to decide them. It is the duty of this court, as of all others of like jurisdiction, to decide what shall pass to the jury as the law of the land, touching the indictment on trial, and what shall not; for questions as to what is law, and what is not law, will in like manner arise, and the law has appointed none but the court to decide them. If it errs in its decisions, it can correct them on a motion for a new trial. if the verdict be against the prisoner; if it willfully decides wrong, its members are liable to impeachment and disgrace. When the evidence has passed to the jury, it is their duty to scan it closely, and to decide what is entitled to credit, and what not; and when they have determined what the facts are that are proved or confessed, they apply the law which has been given them to the facts thus ascertained; and then, acting as judges both of the law and the evidence, return a verdict as to them, deciding under their oaths, [what] may appear to be right. Here is no conflict of duties; the jury acts in harmony with the court, and the court with the jury.

Gentlemen, it has been our desire in this case to adhere strictly to our ordinary course of ruling upon all questions that were brought before us. We were determined, if possible, to go not one hair's breadth beyond our duty, nor fall one hair's breadth short of it. In the eye of the law all men, who stand at the bar of this court accused of crimes, stand equal. We have no favors to deal out to the man of distinction or notoriety, which we deny to the lowly and obscure. In the eye of this court all are equal, and while we allow them the same rights, we subject them to the same rules. We have been earnestly pressed in this case to depart from our ordinary course of ruling in criminal cases. This I attribute mainly to the want of familiarity on the part of the accused and his counsel, with our usual course of ruling here in criminal trials. We have been urged to permit them to argue questions of pure law to you, gentlemen; questions touching the jurisdiction of this court, questions touching constitutional law; to argue over again questions which have once been solemnly decided after full argument by eminent counsel, and which we considered closed questions, and that in the midst of a jury trial. All these motions we have been obliged to overrule, reserving to the accused the right to be heard, should it become necessary,

on a motion for a new trial; not that we have any doubt of the correctness of our former rulings, but that we will not refuse him a hearing in the proper stage of the proceedings. And now, after those rulings, the case comes to you, to be decided according to the evidence which has passed to you, and the law which shall be found applicable to it.

What is the crime set forth in the indictment?

It is treason against the State; the highest crime known to the law; in this State punishable with imprisonment for life; in all others where it is named punished with death; and if we pass from our own to foreign lands, and particularly to that country whence we derive all our political and legal institutions, punished with death inflicted under circumstances calculated to strike the greatest terror, and fix on the memory of the criminal the most lasting infamy. I mention this, not forgetting that many noble hearts have fallen victims to the accusation of treason under arbitrary governments, but simply that you may estimate the universal sentiment of abhorrence with which this crime is regarded, and that you might, while you thus estimate it, feel that it is your duty to require the most satisfactory evidence that it has been committed, and that the defendant is guilty, before you return a verdict against him, on the one hand; and that you may feel on the other, the necessity of discharging with firmness and fidelity that duty which every juror owes to his country, under the oath which he has taken, to return a verdict of guilty on the legal proof of guilt. It is no less the duty of the jury than of the court, to secure the peace of the State by aiding in the firm and impartial administration of the laws.

Now the first question is, can this crime be committed against one of the States of this Union? This question can be considered wholly irrespective of this indictment, wholly irrespective of the guilt or innocence of the prisoner; it involves no fact *in pais*. It is a question of mere constitutional law, and for the court alone to decide. And as the organ of the court, I say to you, gentlemen, that wherever allegiance is due, there treason may be committed; allegiance is due to a State, and treason may be committed against a State of this Union. The defendant and his counsel have gone into an argument to shew where the sovereign power is, and that it is in the people of the United States, considered in there primary or natural capacity, and that it is that people which is sovereign in the State of Rhode Island, and not the organized people of the State itself. In answer to this it is sufficient to say, that we know of no people of the United States, save that which the Constitution of the Union has organized and formed, and they are sovereign only to the extent and in the qualified sense which that instrument expressly grants and defines. Against the natural people, the primary capacity people, (I wish I could command a better phrase,) no crime whatever can be committed, save that which, in violation of the laws of God, one man may perpetrate on another. It is against an organized people only that any crime, and especially the crime of treason, can be committed. We cannot enter into these speculative inquiries as to the origin of government. Sufficient for the court and jury is it that

government exists; they must take it as it is, and where the plain letter of the law prescribes to them their course, that course they are bound to pursue, no less from a sense of duty than by the requirements of the oath of God which is upon them. The Constitution of the United States itself, an instrument in which it is hardly to be sought for, recognises the fact that treason may be committed against a State by an implication too strong to be resisted; it expressly provides that a person accused of treason in any State, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

The result of the debate in the convention that formed the Constitution of the United States, in reference to the article defining treason, is in accordance with this view. The decision of all the courts of these States that have had occasion to touch the question, the opinions of all our commentators on constitutional law, recognise the same fact. The circuit judge of the United States, who presides in this district, Justice Story, in his recent charge delivered in this district, in contemplation of the then unsettled disturbances in this State, repeating almost verbatim the language of the Virginian commentator on Blackstone, distinguishes between treason against a State and treason against the United States. As I understand his views, treason against a State and treason against the United States are to be distinguished, the one from the other, by the immediate objects and designs of the conspirators. If the blow be aimed only at the internal and municipal regulations or institutions of a State, without any design to disturb it in the discharge of any of its functions under the Constitution of the United States, it is treason against the State only; though if the object be to prevent it from discharging those functions, as the election of Senators, or electors of President and the like, it becomes treason against the United States. If any further judicial opinions delivered with reference to our recent troubles were wanting in order to confirm these views, we have them in the opinion of the same court and the same judge, deciding on the sovereign authority of this State to proclaim martial law. Can it be doubted that that power, which of its own constitutional authority can proclaim martial law, is sovereign, or a delegated sovereignty, and that it may define and proclaim what treason is? If any further authority were requisite on this point, we have it in the fact, shewn in the argument of the question to the court, that eleven out of twenty-six States of our Union have inserted an article in their constitutions defining the crime and providing for its punishment, and that two others have made the same provision in their statute laws. The statutes of no other of the States have been referred to, nor have they been examined by the counsel. The probability is, that if they were examined we should find, not that thirteen only of the States, but that the whole twenty-six have defined this crime, and made provision for the punishment of it.

The power to provide for the punishment for this crime the legislature derives, not from the United States, or the people thereof, but from

our own people—from the organized sovereign people of the State; that legislature exercising this power has declared, that treason against this State shall consist only in levying war against the same, or in adhering to the enemies thereof, giving them aid and comfort. This law we now say to you is *constitutional* and binding on all, and that the sovereign authority of this State is such that treason can be committed against it.

We are now prepared, gentlemen, to consider the indictment. The indictment consists of four distinct counts, upon either or all of which you are to return a verdict of guilty or not guilty, according to the evidence which has passed to you, and upon that evidence alone. Nothing that comes within your mere personal knowledge is to be taken into account. You are to presume that the defendant is innocent at the outset, and to be led to a conviction of his guilt, if to that conviction you come, solely by force of the evidence given you, or of the admissions made.

Each of these counts substantially charges, that the prisoner being under the protection of the laws of this State, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and traitorously devising and intending to stir up, move, and excite insurrection, rebellion, and war against the said State, with force and arms, unlawfully and traitorously did conspire, compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, with a great multitude of persons, amounting to a great number, armed and arrayed in a warlike manner, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State; and then and there, with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, in pursuance of the said traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said State, contrary to the duty of his said allegiance and fidelity, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

The particular overt act charged on the prisoner in each count is, that he, together with the armed multitude described, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the State. The only essential difference in the counts is, that the first two charge the overt acts to have been committed in Providence, the first on the seventeenth of May, 1842, the second on the eighteenth of the same month. The two succeeding counts charge the overt acts to have been committed in

Glocester, in the county of Providence, one on the twenty-sixth of June, 1842, the other on the twenty-seventh of the same month.

The overt act charged in each of these counts must be proved by at least two witnesses, or by the prisoner's confession in open court. They may be the same two witnesses, or other two witnesses, but two witnesses at least there must be. There must be two witnesses to prove the particular overt act or part which the prisoner is in each count charged with having taken in the levying of war; and when once any particular overt act is fixed upon him by the two witnesses required, or by the confession, he must be deemed guilty of levying war as described and proved under that particular count which contains such overt act. The acts of the armed assemblage then become his, unless he prove that he had abandoned the conspiracy, or was so absent that he could not have participated in it.

Now the first question of law is, what is it which constitutes the levying of war within the meaning of the act?

In giving you the meaning of these words, we shall rely as little as possible upon our own judgment. We shall endeavour to be governed as much as possible by the opinions of those able jurists who, undisturbed by the excitement and alarm of an agitated community, have after calm and deliberate consideration pronounced their meaning. "To constitute" says Justice Story in the charge to which I have already referred, "an actual levy of war, there must be an assembly of persons met for the treasonable purpose, and some overt act done, or some attempt made by them with force, to execute, or toward executing that purpose. There must be a present intention to proceed in the execution of the treasonable purpose by force. The assembly must now be in a condition to use it if necessary, to further, or to aid, or to accomplish their treasonable design. If the assembly is arrayed in a military manner, if they are armed, and march in a military form for the express purpose of overawing or intimidating the public, and thus attempt to carry into effect the treasonable design, that will of itself amount to a levy of war, although no actual blow has been struck, or engagement has taken place."

This construction of the meaning of the words—levying war against the State—accords entirely with the opinion of Chief Justice Marshall, delivered in the case of Aaron Burr, and in the main with that of all eminent American jurists and writers on the same subject; and we now give it to you as the construction which this court places upon those words.

Let us now consider this construction of the meaning of those words with reference to the evidence which has passed to you under the first two counts in this indictment. It is for you to say what that evidence proves, but I may put these questions to you. Has it been proved by two or more witnesses, or by confession in open court, that on the seventeenth and eighteenth of May, or either of those days, there was assembled in Providence a body of armed men arrayed in a military manner; that they had provided themselves with artillery, musketry, or like im-

plements of war, for the express purpose of making an assault upon, or taking possession of, the State's arsenal or magazine of arms in Providence; that they marched on the night of the seventeenth, or morning of the eighteenth, with intent of carrying into effect their design; that they arrayed themselves in arms before the arsenal; that the arsenal was at that time in the actual occupation of the military forces of the Government of the State; that they sent a messenger with a flag to demand its surrender; that upon the refusal to surrender the messenger returned; and that upon his return, or before it, one or more of the guns were aimed at the building; that there were two attempts made to discharge them into the building? If you believe these facts have been proved by the two witnesses, or by the confession of the prisoner, it is the opinion of this court not only that war was levied, but actually carried on against the State, although not a single gun was discharged, and no engagement actually took place.

But supposing you should be satisfied that war had been thus levied, this will not justify you in returning a verdict of guilty; you must be satisfied by the two or more credible witnesses, or by confession in open court, that the prisoner took a part in it; in other words, his particular overt act must be thus proved upon him. It is observed in the case of Bollman and Swartout, that if a body of men be actually assembled for the purpose of effecting by force a treasonable object, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors. Both circumstances, says Judge Marshall, must concur. They must perform a part, which will furnish the overt act, and they must be leagued with the conspirators. He who comes within this description levies war, arrays and disposes armed men against the State. If this applies to the private in the ranks, it pre-eminently applies to the commander-in-chief. As to him, it can only be necessary to prove that he claims to be such commander, and to prove his presence at the scene of action; for it cannot be supposed that an assault can be made on an armed arsenal or fortress in the presence of the commander-in-chief without his orders, unless it be made so to appear. Indeed it has been declared by the highest authority, that to appear at the head of a rebel army is itself an overt act of levying war. The main question then is, did the prisoner march with this body of men to the arsenal, or was he then and there present; and is the fact proved by the two or more creditable witnesses, or confessed by him in open court?

If you believe from such evidence or confession that he was leagued with the conspirators, and performed a part, the overt act or acts charged are fixed upon him, and there is no alternative but to return a verdict of guilty on one or both of these counts in the indictment.

I now pass to the other two counts in the indictment. These charge the levying of war against the State in Glocester, on the twenty-fifth and twenty-seventh of June. Was war then and there levied within the meaning of the law? That is the first question which you have to decide. An assemblage of armed men, for a treasonable purpose, may

sometimes accomplish its object by the terror which it inspires; and hence it has been decided that actual violence to external objects is not necessary to constitute the levying of war. It can hardly be doubted, that "if a rebel army" to use the language of Chief Justice Marshall, "avowing its hostility to the sovereign power, should front that of the Government, should march and countermarch before it, should manœuvre in its face, and should then disperse, from any cause whatever, without firing a gun," it can hardly be doubted, I say, that it would amount to an act of levying war. True, the Government troops were not present, and under the eye of the insurgent force at Chepatchet, as at the arsenal; but a portion of the State, if not actually invaded by a foreign force, was nevertheless, as all the testimony goes to shew, in the actual occupation of a body of armed men, hostile to the Government. The laws of the legal government did no longer there afford protection to its peaceful citizens. Men were taken and treated as prisoners of war; property was seized by the strong arm of military force. The hostile force occupied an entrenched camp on a hill commanding the public highways; and a number of pieces of ordnance were mounted and loaded, and so directed as best to defeat an assailing force. Ammunition was there, a commissary department was established, and from two to three hundred men were daily drilled on the height, as preparatory to further operations. Every thing indicated preparations for a permanent military occupation of a portion of the State. Knowledge of these facts threw the whole State into military array, and subjected it to martial law.

This was the external appearance of the movement, and certainly it does present an appearance of a movement of a warlike character; and equalling, at least, the mere military manœuvring in front of the Government forces, as mentioned by Chief Justice Marshall.

Should you be satisfied by the confession in open court, or by other evidence, that an armed force of two or three hundred persons was actually embodied at the time and place mentioned in the indictment, there entrenched in a fortified camp, with the avowed object of overturning the existing Government, and establishing a new one on its ruins, and to that end taking prisoners of war and seizing private property, there is no doubt in the mind of this court but that such acts amount to a levy of war within the meaning of the statute. But though from the proof in the case you should come to this conclusion, you still cannot find the prisoner guilty, unless you are also satisfied by two or more creditable witnesses, or by his confession, that he performed a part which will be the proof of the overt act. Here also to prove that he was present, acting as commander-in-chief, is, as under the two preceding counts, at once to prove that he took a part, and was leagued with the conspirators.

The material point here to be proved is the overt act; and any two creditable witnesses who swear that they saw him with the insurgent force armed, marching with them, or performing any other part in furtherance of the common design, are sufficient to establish the overt act.

The intent with which he was there, or the character which he as their commander-in-chief assumed, may be established by proof of his own admissions, or by his declarations in open court, or by his acts; and may be proved by one or any number of witnesses, each testifying to a distinct admission, or a distinct fact. Now, gentlemen, if it has been thus proved, under either or both these counts, that he performed a part with the insurgent force, that he was their commander-in-chief, these two counts also are sustained, and it will be your duty to return a verdict of guilty; otherwise a verdict of not guilty on the same counts, or either of them.

But it is due to the prisoner, since such has been his course, to say, that from the testimony which he has put in, and his declarations here in court, he has seemed to be rather ambitious to shew that he was there performing a part, what that part actually was, and how he stood related to his associates.

It may be, gentlemen, that he really believed himself to be the Governor of this State, and that he acted throughout under this delusion. However this may go to extenuate the offence, it does not take from it its legal guilt. It is no defence to an indictment for the violation of any law for the defendant to come into court and say: "I thought that I was but exercising a constitutional right, and I claim an acquittal on the ground of a mistake." Were it so, there would be an end to all law and all government. Courts and juries would have nothing to do but to sit in judgment upon indictments, in order to acquit or excuse. The accused has only to prove that he has been systematic in committing crime, and that he thought that he had a right to commit it; and, according to this doctrine, you must acquit. The main ground upon which the prisoner sought for a justification was, that a constitution had been adopted by a majority of the male adult population of this State, voting in their primary or natural capacity or condition, and that he was subsequently elected, and did the acts charged, as Governor under it. He offered the votes themselves to prove its adoption, which were also to be followed by proof of his election. This evidence we have ruled out. Courts and juries, gentlemen, do not count votes to determine whether a constitution has been adopted, or a governor elected, or not. Courts take notice without proof offered from the bar, what the constitution is or was, and who is or was the Governor of their own State. It belongs to the legislature to exercise this high duty. It is the legislature which, in the exercise of its delegated sovereignty, counts the votes, and declares whether a constitution be adopted, or a governor elected, or not; and we cannot revise and reverse their acts, in this particular, without usurping their power. Were the votes on the adoption of our present constitution now offered here, to prove that it was or was not adopted, or those given for the Governor under it, to prove that he was or was not elected, we could not receive the evidence ourselves; we could not permit it to pass to the jury. And why not? Because, if we did so, we should cease to be a mere judicial, and become a political tribunal, with the whole sovereignty in our hands. Neither the people nor

the legislature would be sovereign. We should be sovereign, or you would be sovereign; and we should deal out to parties litigant here at our bar sovereignty to this or that, according to rules or laws of our own making, and heretofore unknown in courts. In what condition would this country be, if appeals could thus be taken to courts and juries? *This* jury might decide one way, and *that* another; and the sovereignty might be found here to-day, and there to-morrow. Sovereignty is above courts or juries, and the creature cannot sit in judgment upon its creator. Were this instrument offered as the constitution of a foreign State, we might perhaps, under some circumstances, require proof of its existence; but even in that case the fact would not be ascertained by counting the votes given at its adoption, but by the certificate of the secretary of State under the broad seal of the State. This instrument is not offered as a foreign constitution, and the court is bound to know what the constitution of the Government is under which it acts, without any proof even of that high character.

We know nothing of the existence of the so called "People's constitution" as law, and there is no proof before you of its adoption, and of the election of the prisoner as Governor under it, and you can return a verdict only on the evidence that has passed to you.

Our ruling on this point is in exact accordance with that on the same point in the trial of the indictment of the State against Franklin Cooley, where, after an elaborate argument, it was unanimously decided that no such evidence could be received by the court or pass to the jury.

This case is now with you, gentlemen; you can find the prisoner guilty on one or more counts in the indictment, and not guilty on the residue; or you may return a verdict of guilty or not guilty generally, according as you find the law applies to the evidence given you.

The court has now performed its duty. Go ye, gentlemen, and do yours.

March term, 1844.—*Indictment*.

STATE
vs.
THOS. W. DORR.

Be it remembered that, at the August term of this court, 1842, the grand jurors of the State of Rhode Island and Providence Plantations, and in and for the body of the county of Newport, upon their oaths present: that Thomas Wilson Dorr, of the city of Providence, in the county of Providence, attorney and counsellor at law, being an inhabitant of, and residing within, the said State of Rhode Island and Providence Plantations, and being under the protection of the laws of the said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of said State of Rhode Island and Providence Plantations to disturb, and to stir up, move, and excite insurrection, rebellion, and war against the said State, on the seventeenth day of May, in the year of our Lord

one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did conspire, compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents, of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, afterwards, to wit, on the said seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with a great multitude of persons, whose names are at present to the jurors unknown, to a great number, to wit, of the number of three hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together, and in a warlike and hostile manner array and dispose themselves against the said State of Rhode Island and Providence Plantations; and then and there, that is to say, on the day and year aforesaid, at the city of Providence aforesaid, in the aforesaid county of Providence, within the said State, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said State of Rhode Island and Providence Plantations, contrary to the duty of his said allegiance and fidelity, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thomas Wilson Dorr being under the protection of the laws of the said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of said State to disturb, and to stir up, move, and excite insurrection, rebellion, and war against the said State, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did conspire, compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, afterwards, to wit, on the said eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-two, at the city of Providence aforesaid, in the aforesaid county of Providence, with a great multitude of other persons whose names are at present to the jurors aforesaid unknown, to a great number, to wit, to the number of three hundred persons and upwards, armed and arrayed

in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the State; and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, that is to say, on the day and year last aforesaid, at the city of Providence aforesaid, in the aforesaid county of Providence, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said other persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did prepare and levy war against the said State, contrary to the duty of the allegiance of the said Thomas Wilson Dorr, against the form of the statute in such [case] made and provided, and against the peace and dignity of the State.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thomas Wilson Dorr, being an inhabitant of, and residing within the said State of Rhode Island and Providence Plantations, and being under the protection of the laws of said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of said State to disturb, and to stir up, move, and excite insurrection, rebellion, and war against the said State, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did conspire, compass, imagine, and intend to raise and levy public war, insurrection, and rebellion against the said State; and in order to perfect, fulfil, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, afterwards, to wit, on the said twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester aforesaid, in the aforesaid county of Providence, with a great multitude of other persons whose names are at present to the jurors unknown, to a great number, to wit, to the number of four hundred other persons, and upwards, armed and arrayed in a warlike and hostile manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State, and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, that is to say, on the day and year last aforesaid, at Glocester aforesaid, in the aforesaid county of Providence, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said other persons so as aforesaid trai-

torously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy war against the said State, and contrary to the duty of the allegiance of the said Thomas Wilson Dorr, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Thomas Wilson Dorr being under the protection of the laws of the State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and wickedly and traitorously devising and intending the peace of the said State to disturb, and to stir up, move, and excite insurrection, and rebellion, and war against the said State, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester aforesaid, in the aforesaid county of Providence, with force and arms, unlawfully, falsely, maliciously, and traitorously did compass, conspire, imagine, and intend to raise and levy public war, insurrection, and rebellion against the said State; and in order to perfect, and fulfil, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, afterwards, to wit, on the said twenty-seventh day of June, in the year of our Lord one thousand eight hundred and forty-two, at Glocester aforesaid, in the aforesaid county of Providence, with a great multitude of other persons, whose names are at present to the jurors aforesaid unknown, to a great number, to wit, to the number of four hundred other persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State, and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said State; and then and there, that is to say, on the day and year last aforesaid, at Glocester aforesaid, in the aforesaid county of Providence, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, with the said other persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare, and levy public war against the State, contrary to the duty of the allegiance of the said Thomas Wilson Dorr, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

And afterwards, to wit, on the tenth day of the August term, A. D. 1843, the said Thomas Wilson Dorr comes into court in custody of the sheriff, and the said indictment having been read to him, it was forthwith demanded of him how he will acquit himself concerning the premises in said indictment charged and specified. And thereupon the said Thomas Wilson Dorr files his special plea.

And afterwards, to wit, on the second day of the March term, A. D.

1844, the said Thomas Wilson Dorr comes into court in the custody of the sheriff, and said indictment having been read to him, it was forthwith demanded of him how he will acquit himself concerning the premises in said indictment charged and specified; and the said Thomas Wilson Dorr withdraws his special plea before pleaded, and he saith that he is not guilty. And it being demanded of him how he will be tried, he said by God and his country. And the jurors, by whom the matter may be better known, to try upon their oaths whether the said Thomas Wilson Dorr be guilty of the charges in said indictment specified, to wit:

Joseph Paddock, jun.,	David Seabury,
Benjamin Carr,	Benjamin Corey,
Asa Davol,	Charles W. Howland,
William L. Melville, jun.,	Borden Chace,
William Card,	Richard Norman,
Jonathan Coggeshall,	William Southwick,

come into court, and being empannelled and sworn to speak the truth concerning the premises, upon their oaths, do say: "We find the prisoner guilty in manner and form as laid in the indictment."

And afterwards, to wit, on the twenty-first day of said term, the said Thomas Wilson Dorr again comes into court in custody of the sheriff, and it is then asked of him if he has any thing to say why sentence should not now be pronounced against him. And thereupon, afterwards, the sentence of said court is—

That the said Thomas Wilson Dorr be imprisoned in the State's prison, at Providence, in the county of Providence, for the term of his life, and there kept at hard labor in separate confinement.

NEWPORT, *Sc.*

Clerk's Office, Supreme Court.

I, William Gilpin, clerk of the supreme court in and for the county of Newport, in the State of Rhode Island and Providence Plantations, do hereby certify, that I have compared the aforegoing copies of the record and proceedings in the indictment—State vs. Thomas Wilson Dorr, with the records and papers on file in this office, and found the same to be true and correct copies thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this twenty-second day of December, in the year of our Lord one thousand eight hundred and forty-five.

[L. S.]

WM. GILPIN, *Clerk.*

Fee, copy, $20.

Petition of Thos. W. Dorr for writ of error, &c.

To either of the justices of the Supreme Court of the United States now sitting at Washington, sheweth:

The petition of Thomas W. Dorr, of the city and county of Providence, and State of Rhode Island, a citizen of the United States, and

of the said State of Rhode Island: That at the March term, 1844, of the supreme court, being the highest judicial tribunal of said State, within and for the county of Newport, in said State, he, the said Dorr, was tried and convicted of the crime of treason against said State, under an indictment preferred and found in said county of Newport, for acts alledged to have been by him committed in the aforesaid county of Providence; that thereupon, on the 25th day of June, A. D. 1844, he was, by the said supreme court, sentenced to imprisonment in solitary confinement for the term of his life in the State prison of said State at Providence aforesaid; that, on the 27th day of said June, he was thereunto committed, where he has ever since remained, and now is.

That, upon the trial aforesaid, it was insisted by his counsel and himself that, under the Constitution and laws of the United States treason was an offence that could not be committed against a separate individual State of the Union, but against the United States collectively only; and that the act of Rhode Island, passed January, A. D. 1838, Chap. 1st, "concerning crimes and punishments," being repugnant to the Constitution and laws of the United States, was unconstitutional and void; and the said supreme court were requested so to instruct and charge the jury, empannelled for the trial aforesaid, which instruction the said court then and there refused to give; but, on the contrary, did instruct the said jury that the crime of treason might be committed against a separate and individual State; and under the aforesaid act of 1838, and the act of March, 1842, might well be tried and punished as a State offence; to which refusal of the said court so to instruct the jury as prayed for, as well as to the instruction so as aforesaid given by said court to said jury, this petitioner then and there excepted as erroneous, as appears by the bill of exceptions, a certified copy whereof is hereunto annexed; which said bill, although not signed by the said court, was so far allowed by them that the same was ordered to be recorded in the minute book of said court, and was by the clerk thereof so recorded, as also further appears by the said copy and certificate hereto annexed. Whereupon, he prays that a writ of error may be allowed in said cause, returnable to the present term of this honorable court.

THOS. W. DORR.

State prison, Providence, Rhode Island,
January 4th, A. D. 1845.

Filed, 7th Feby., 1845.

Writ of error.

UNITED STATES OF AMERICA, *Ss:*

The President of the United States, to the honorable the chief justice and other justices of the supreme judicial court of the State of Rhode Island and Providence Plantations, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court before you, or some of you, being the highest court of law or equity of the

said State in which a decision could be had in the said suit between the State of Rhode Island and Providence Plantations and Thomas Wilson Dorr, of Providence, in said State, which suit was an indictment found at the August term, 1842, of the said supreme judicial court, holden at Newport, within and for the county of Newport, by the grand jurors for the body of said county, against the said Thomas Wilson Dorr; wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Thomas Wilson Dorr, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seals, or the seal of one of you, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this seventh of February, in the year of our Lord one thousand eight hundred and forty-five.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by me, Joseph Story, one of the justices of the Supreme Court of the U. States, a bond having been duly given and approved by me pursuant to law, and which bond I hereby return to be filed among the papers of the Supreme Court of the U. States.

Witness my hand this 7th day of February, A. D. 1845.

JOSEPH STORY.

Citation.

THE UNITED STATES OF AMERICA:

To his excellency, James Fenner, Governor of the State of Rhode Island and Providence Plantations, and to Joseph M. Blake, esq., attorney general of the same State, and to the State aforesaid, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme judicial court of the State of Rhode Island and Providence Plantations, wherein Thomas Wilson Dorr, of Providence, in said State, is plaintiff in error, and the said State of Rhode Island and Providence Plantations is defendant in error; to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the undersigned, one of the justices of the Supreme Court of the United States, this seventh day of February, in the year of our Lord one thousand eight hundred and forty-five.

JOSEPH STORY, [L. S.]
One of the Justices of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *Rhode Island district, ss.*

On this seventeenth day of February, in the year of our Lord one thousand eight hundred and forty-five, personally appeared Sylvester Hartshorn, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to his excellency, James Fenner, Governor of the State of Rhode Island and Providence Plantations, and also delivered a like copy to Joseph M. Blake, esq., attorney general of the same State.

JOHN PITMAN,
District Judge of the United States for Rhode Island district.

UNITED STATES OF AMERICA, *Rhode Island district, sc.*

Marshal's Office, Providence, February 17th, 1845.

I hereby certify, that I have this day served upon James Fenner, Governor of the State of Rhode Island and Providence Plantations, and also upon Joseph M. Blake, esq., attorney general of the same State within named, a true and attested copy of the within citation, by giving to each in hand a true and attested copy of the same.

SYLVESTER HARTSHORN,
United States Marshal for Rhode Island district.

Fees, two services,	$4 00
Travel 15 miles,	1 50
Two copies delivered,	1 00
	$6 50

Bond.

Know all men by these presents, that we, Thomas W. Dorr, of the city and county of Providence and State of Rhode Island, as principal, and Hezekiah Willard, Henry Temple, James Thurber, jr., also of said Providence, as sureties, are held and firmly bound to the State of Rhode Island in the sum of three hundred dollars, to be paid to the

said State of Rhode Island; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at said city of Providence, the 4th day of January, in the year of our Lord one thousand eight hundred and forty-five.

The condition of this obligation is such, that whereas the said Thos. W. Dorr has sued out of the Supreme Court of the United States a writ of error to reverse a judgment against him by the supreme court of the said State of Rhode Island, at the March term thereof, for the county of Newport, in which the said State of Rhode Island, by the Attorney General of said State, Joseph M. Blake, was prosecutor, and the said Thomas W. Dorr was defendant. Now, if the said Thomas W. Dorr shall enter and prosecute his said writ of error before the Supreme Court of the United States, and shall well and truly pay all such costs as may be adjudged by said Supreme Court of the United States for him to pay in said suit upon said writ of error, then this obligation to be void, otherwise to be and remain in full force and virtue.

THOMAS W. DORR, [L. S.]
HEZEKIAH WILLARD, [L. S.]
HENRY TEMPLE, [L. S.]
JAMES THURBER, Jr. [L. S.]

Attest: WALTER S. BURGES,
GEORGE TURNER.

Approved February 7, 1845, and let this bond be filed with the clerk of the Supreme Court of the United States.

JOSEPH STORY,
One of the Justices of the Supreme Court of the United States.

Filed, February 7th, 1845.

To the honorable the Supreme Court of the United States, now holden at the city of Washington.

We, the subscribers, justices of the supreme court of the State of Rhode Island and Providence Plantations, heretofore styled the supreme judicial court of said State, and now exercising the powers and jurisdiction of said supreme judicial court, do hereby certify, that not until after the first Monday in December instant was the writ of error—Thos. W. Dorr vs. said State, personally served on or delivered to us, or either of us, nor on the chief justice of our said court; a copy of said writ was left with the clerk of our said court within and for the county of Newport, a long time before said Monday; but this fact was not known to us, or either of us, nor as we believe to our chief justice, until after said first Monday in December. As soon as practicable, after said writ was delivered to us, we caused the foregoing copies of the records and proceedings, in the case referred to in said writ, to be made and certified by said clerk, the same being copies of all the record and proceedings in said case, which are now in the office of said clerk, or under the control of

said court; which copies we herewith openly and distinctly send to you under the seal of said court, together with the said writ of error.

In witness whereof, we have hereto set our hands and seals, this 25th day of December, A. D. 1845.

[L. S.] LEVI HAILE, [L. S.]
J. M. STAPLES, [L. S.]
GEO. A. BRAYTON. [L. S.]

Affidavit.

The affidavit of George Turner and Walter S. Burges, esqrs.

These affiants declare and say, that they, together with the late honorable Samuel Y. Atwell, were the counsel retained and employed by Thomas W. Dorr, esq., in 1844, to defend said Dorr against an indictment pending in the supreme court for Newport county, in the State of Rhode Island, wherein the said Dorr was charged with treason against said State; that they personally attended said court, throughout all its sittings for the trial of said indictment, from his arraignment on the 29th of February, A. D. 1844, to the sentence passed upon him on the 25th of June, A. D. 1844, in their character as counsel, and for the purposes of his defence.

The affiants further declare and say, that they have seen and examined the writ of error, sued out of the Supreme Court of the United States against the said State of Rhode Island by said Dorr, the return thereon made by three of the justices of the supreme court of the State of Rhode Island, and also the copy of the "records and proceedings" attached by the said justices to the said writ of error and return.

And these affiants further declare and say, that the said transcript of said "records and proceedings" is imperfect and defective in several particulars, deemed important by said Dorr and these affiants, upon a trial of said writ of error, viz:

First. On Friday morning, April 26, 1844, at the commencement of the trial of indictment and before any juror had been sworn, the Attorney General (Mr. Blake,) moved the court to allow him to put to each juror, as called, a series of *six* questions, which he produced in writing, and read to the court; the *third* and *fourth* questions, both of which were objected to by Mr. Dorr and his counsel, were in the following words, viz: "3d. Did you vote for the said Thomas W. Dorr for governor at the election on 18th of April, 1842?" "4th. Have you formed the opinion, or do you believe, that said Thomas W. Dorr was the Governor of this State, or authorized to execute the duties of Governor, at any time between the 16th day of May, 1842, and the 28th of June, 1842?" Upon these two questions, so objected to, after hearing argument, the court were divided in opinion—two of the judges being for allowing them to be propounded, and two for not allowing them; the transcript returned with the writ of error contains no copy of the said six interrogatories, or any of them, although the same were in writing, filed

with the clerk in open court, and make a part of the "proceedings" under said indictment.

Second. The great point upon which Mr. Dorr rested his defence was *justifying* his acts as being, at the time they were done, the legally elected Governor of the State, under a valid constitution, rightfully adopted, which he was sworn to support; and to *that* an auxiliary point was to rebut any *presumption* of traitorous intent on his part. With a view, therefore, to both these objects, on Friday, May 3d, 1844, John S. Harris, a witness who had been summoned on the part of the Government, but not examined by them, and who had been one of the secretaries of the convention that framed the People's constitution, and had the votes given for its adoption, and also one of the clerks of the house of representatives under the People's constitution, and then had the custody of all the original votes given in throughout the State for Governor and other general officers, at the election had on the 18th day of April, 1842, was called as a witness for the defendant; upon the first introductory question put to the witness on the part of the defendant, the Attorney General objected to the admission of any testimony on this point. After some discussion at the bar, the court required the offer of the testimony of the witness to be reduced to writing, and filed with the clerk; whereupon the defendant's counsel forthwith drew up in writing, and filed with the clerk, an offering, of which the following is an exact copy, taken from a duplicate made at the time, viz: "The defendant offers to prove, by John S. Harris, that a large majority of the whole male adult population of this State, being citizens of the United States, gave their votes for the adoption of the constitution, commonly known and called the People's constitution of Rhode Island, in the month of December, A. D. 1841; under which constitution the defendant was elected Governor of this State in the month of April, 1842. And this testimony he offers in this stage of the case, to repel the imputation of malicious motives and intentions, as charged in the indictment, and urged by the prosecutor in behalf of the State." The court ruled out the testimony so offered, and the defendant took exception to the ruling.

Third. On the afternoon of the same day, upon the point of justification before mentioned, and in consequence of a similar request from the court, the following offering was reduced to writing, and filed with the clerk on behalf of the defendant, viz: "The defendant proposes to show by the authorities, that the people of this State have a right to adopt a written constitution of government, and that in the exercise of that right they did adopt a constitution, in the month of December, 1841, under which the defendant derived his authority; and this fact he proposes to prove by the production of the votes of the people themselves in favor of said constitution." This testimony was also ruled out by the court, and the defendant took exception to the ruling.

Fourth. Immediately afterwards, on the same day, the defendant offered in writing, filed with the clerk as aforesaid, as follows, viz: "The defendant offers to prove by the votes of the people, to be produced and verified, that a large majority of the whole resident adult male popula-

tion of the State, being citizens of the United States, gave their votes for the adoption of the constitution, called the People's constitution of Rhode Island, in the month of December, 1841; and also to prove, that under the said constitution the defendant was elected Governor of this State in the month of April, 1842; and this testimony he now offers to repel the imputation of malicious and treasonable motives and intentions, as charged in the indictment, and urged by the prosecution in behalf of the State." This testimony was also ruled out by the court, and the defendant excepted to the ruling. These affiants say, that neither of the aforegoing three last written offerings appear in the said transcript of the "records and proceedings" returned with the said writ of error; nor, as these affiants believe, are they, or either of them, now remaining on the files of the said supreme court in the office of saidclerk at Newport aforesaid; the copies whereof herein given, are made from exact duplicates taken at the time as aforesaid. The defendant then next proposed to offer to the jury a copy of the People's constitution, to show that the government provided under it was republican in its form, agreeably to the requirements of the Constitution of the United States." This offering and its object do not sufficiently appear in any part of said transcript; this also, however, was ruled out by the court, and the ruling excepted to by the defendant. The defendant next offered the message delivered by him in May, 1842, before the general assembly under the People's constitution, to explain the motives and objects of the defendant." This evidence was also ruled out by the court, and to the ruling the defendant took exception.

In the written opinion of the court, on the application of the defendant for a *new trial*, (which said opinion was made, and filed in the clerk's office some time after sentence had been executed upon the defendant,) the court say, in effect, that their only instruction to the jury, upon the question of the defendant's intent, is given in a copy of their charge to the jury attached to that opinion; these affiants believe the court to have been in error in so stating; because at the trial, after the chief justice had concluded the charge, which he read from a manuscript before him, the counsel for the defendant requested "the court further to charge the jury, that in all criminal trials for capital offences the jury are the judges of the law as well as the facts in the case; and also the evidence for the State "did not support the charge of traitorous and criminal intent as laid in the indictment." Whereupon the court further verbally charged the said jury, as follows, viz: "We can charge the jury only as we have charged them; they are to apply the law, as laid down to them by the court, to the facts as they may find them proved before them. On the other point, the only question of intent which the jury have to consider is, if they find all or any of the overt acts of levying war sufficiently proved, whether the defendant at the time intended to commit those acts." The words used being noted at the table at that time. And the affiants further say, that to the best of their knowledge, recollection, and belief, during the argument of said motion for a new trial, or at any other time, or intimation

ever fell from the court that any inaccuracy or error was contained in the bill of exceptions filed in behalf of the defendant, upon which a new trial was asked for, except in one instance suggested by the court, and corrected at the time; and that their first knowledge of such assertion was derived from a perusal of said written opinion in the clerk's office, several months subsequent to the termination of the trial of the said defendant.

GEORGE TURNER,
WALTER S. BURGES.

PROVIDENCE, *January, 10th*, 1846

Subscribed and sworn to, before me,
GEORGE RIVERS, *Justice of the Peace.*

On or about the 27th of February, 1845, I went from Newport, where I reside, to Providence, for the purpose of delivering to the honorable W. R. Staples, one of the associate justices of the supreme court of the State of Rhode Island, the writ of error from the Supreme Court of the United States to the justices of the said supreme court of the State of Rhode Island, wherein Thomas W. Dorr is plaintiff, and the said State of Rhode Island is defendant in error; and of procuring the signature and seal of said Staples, to a copy of the records and proceedings of said court, in the matter of the indictment—the State of Rhode Island against said Dorr; which copy, duly certified by the clerk and under the seal of said court, I had caused to be prepared, and had with me for that purpose. Upon calling at his residence in the afternoon of the same day, I found the judge at home, and told him the object of my visit; showed him the copy certified by the clerk, and delivered to him the writ of error. A conversation of some length ensued between us on the subject, all the particulars of which I shall not attempt to give in detail, although the substance and leading features of it are still fresh in my recollection. He asked why I had not made application to Judge Durfee, since he not only lived in Newport county, but was the chief justice of the court. I gave my reasons for having preferred calling on him, as being more convenient, and referred him to the writ of error, for proof that it might be done by either of the justices of the court. He said that he should certify and seal nothing that he had not himself examined and compared. I then proposed that he should return with me to Newport that evening, and make the examination for himself, urging him to do so upon the strength of a letter from B. F. Hallet, esq., to W. S. Burges, esq., upon the subject, a part of which I read to him. He, during the conversation, mentioned the fact that John Whipple, esq., the counsel for the State, had returned from Washington, having arrived the day before; and insisted that as he, Whipple, had left Washington, and the writ of error (which he, Staples, had previously read) was not returnable until December following, there could be no occasion for the haste that Mr. Hallet seemed to require. I admitted that the thing wore the same appearance to me, and told him that I would immediately call on Mr. Whipple, and obtain from him all the

information I could, and if necessary see him again. Judge Staples remarked, that if upon seeing Mr. Whipple I then thought it indispensable, he would go at once to Newport, and certify the case up. I went immediately and saw Mr. Whipple, who satisfied me entirely that no such great haste was required. Before I left Judge Staples, and when folding up my papers, I remarked, that as the writ was directed to the court, he would of course keep *that;* but he said "no, you had better keep the papers all together; we (meaning the judges,) shall all be at Newport next week to hold a court, when we will arrange it." I thereupon took back the writ of error, and it remained in my possession until about two weeks since, when I delivered it to the honorable George A. Brayton, one of the justices of said court, at said Newport; up to which time the said writ had never been asked for, either by said Staples, or any of [the] justices of said court; nor had I ever again offered it to either of them, believing then and now, that as one of Mr. Dorr's counsel, I had done every thing required at my hands, and that it depended upon the court alone to make due and seasonable return upon said writ of error.

GEORGE TURNER.

Providence, January 6th, 1846.

Subscribed and sworn to this sixth day of January, A. D. 1846, before me,

EDWIN METCALF,
Justice of the peace.

United States of America, Supreme Court.

THOMAS WILSON DORR, Plff. in Error,
vs.
STATE OF RHODE ISLAND, &c., Deft. in Error.

Assignment of errors.

On a judgment of the supreme judicial court, begun and holden at Newport, within and for the county of Newport, and State of Rhode Island and Providence Plantations, on the fifth day of March, in the year one thousand eight hundred and forty-four, wherein the said State of Rhode Island is plaintiff, and the said Thomas Wilson Dorr defendant; the said Dorr applies for a writ of error to issue, returnable to the next term of the Supreme Court for the United States of America, to be begun and holden at Washington, in the District of Columbia; and assigns for error in the records of process of proceedings and judgment aforesaid, founded on certain statutes of said State, and the doings and construction thereon by the said supreme judicial court, the following, to wit, that the judgment rendered in the said court in this case, it being the highest court of law and equity of the said State in which a decision could be had in said case, should be reversed, for the reasons following, viz:

That the said supreme judicial court of Rhode Island, &c., by which

said judgment was rendered, had not, under the Constitution and laws of the United States, jurisdiction over the crime of treason, which was alleged and charged in the indictment on which said judgment was rendered against the said Dorr; and that the act of the said State of Rhode Island and Providence Plantations, concerning crimes and punishments, chapter first, under which said indictment was found and said judgment rendered, which act is hereto appended and set out as a part of the record in the said cause, and also the rulings and judgment of the said court in the construction of said act, are repugnant to, and inconsistent with, the provisions of the Constitution and laws of the United States, and therefore void.

There is also error in this, that in the trial and hearing of the said cause the said defendant offered to, and claimed the right to, argue to the jury that the crime of treason, as set forth in said indictment, could not be committed, in the form set forth and charged, against a several and separate State of this Union, under the said Constitution and laws of the United States; but the court refused to permit the defendant or his counsel to argue the same to the jury.

There is also error in this, that the said defendant set up in justification, and offered to prove, that at the time of the acts alleged in the said indictment as constituting the crime of treason against the said State, he was in the lawful exercise of the office of Governor of said State, having been duly elected and sworn under a valid constitution of said State, which constitution constituted and formed said State a republican form of government, and as such entitled to the guarantee of the Constitution of the United States, in the exercise of its lawful functions through its regularly appointed executive and other officers; but the said court refused to permit such evidence and justification to go to the jury.

There is also error in this, that by the record aforesaid it appears that the judgment aforesaid was given for the said State of Rhode Island, against the said Thomas Wilson Dorr; whereas, by the law of the land the said judgment ought to have been given for the said Dorr; and the said Dorr prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings, and the matters herein stated, may be reversed and annulled.

THOMAS WILSON DORR,
By B. F. HALLETT,
Attorney for him, Thomas W. Dorr.

An act concerning crimes and punishments.

Be it enacted by the general assembly, as follows:

Chapter first. Of offences against the sovereignty of the State.

Section 1. Treason against this State shall consist only in levying war against the same, or in adhering to the enemies thereof, giving them aid and comfort.

Section 2. Every person who shall be convicted of treason against this State, shall be imprisoned during life.